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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegation of Authority; Executive Order 12580; Correction

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule; correction.

SUMMARY: In the Federal Register of Friday, April 7, 1989, 54 FR 14043, amendment 7 appearing in the third column of page 14045 added incorrectly a new paragraph "(q)" to § 2.42. The correct paragraph designation should be "(s)". In addition, in the same Federal Register issue, amendment 12 appearing in the first column of page 14048 added incorrectly a new paragraph "(a)(32)" to § 2.70. The correct paragraph designation should be "(a)(35)".

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Siegler, Deputy Assistant General Counsel, Office of the General Counsel, U.S. Department of Agriculture, Washington, DC (202) 447–6035.

Done this 30th day of June, 1989, at Washington, DC.

Clayton Yeutter,
Secretary of Agriculture.

[FR Doc. 89–15997 Filed 7–6–89; 8:45 am]
BILLING CODE 3410–14–M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0655]

RIN 7100–AA91

Truth in Lending; Home Equity Disclosure and Substantive Rules; Correction

AGENCY: Board of Governors of the Federal Reserve System.
ACTION: Final rule; correction.

SUMMARY: The Board is correcting a technical error to footnote 10b of Regulation Z, which appeared in the Federal Register on June 9, 1989 (54 FR 24670).

FOR FURTHER INFORMATION CONTACT: Sharon Bowman or Leonard Chanin, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3667.

SUPPLEMENTARY INFORMATION: On June 9, 1989, the Board issued a final rule amending Regulation Z to implement the Home Equity Loan Consumer Protection Act of 1988. The final rule contained two references to footnote 10b. The first reference accompanies § 226.5b(d)(5)(ii). The second reference accompanies § 226.16(d)(3). This notice changes the second footnote 10b reference to refer to new footnote 36b.

The following corrections are made to FR Doc. 89–13507; Truth in Lending:

PART 226—[AMENDED]

1. Section 226.16(d)(3) is corrected by revising the reference to the footnote at the end of the paragraph and by adding a new footnote 36b to read as follows:

§ 226.16 Advertising.

* * * * *

(d) * * *

(3) * * * [36b]

* * * * *

[36b] See footnote 10b.

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 30, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89–15916 Filed 7–6–89; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 60996–9122]

Reexports into COCOM Participating Countries

AGENCY: Bureau of Export Administration, Commerce.
ACTION: Final rule.

SUMMARY: The Omnibus Trade and Competitiveness Act (OTCA), signed by the President on August 23, 1988, amended section 5(a)(4) of the Export Administration Act of 1979 (EAA) to require the removal of controls on most reexports to COCOM and countries qualifying for full benefits under section 5(k) of the EAA. On November 21, 1988, the Bureau of Export Administration published a proposed rule in the Federal Register to implement this provision. Having received and considered comments, the Bureau of Export Administration is issuing a final rule expanding the permissive reexport provisions of § 774.2 of the Export Administration Regulations (EAR) (15 CFR 774.2) to allow reexports of U.S. commodities to and among COCOM participating countries, Finland, and Switzerland, without prior U.S. authorization. Certain limited exceptions are specified.

The reexporter must submit a written notification report to the Office of Export Licensing if the U.S. origin commodities listed in Supplement No. 1 or 4 to Part 773 are being reexported from a country other than a COCOM participating country, Finland or Switzerland. The rule specifies what information must be included in the notification.

The permissive reexport provision would require that a Swiss Blue Import Certificate be obtained by the reexporting party before reexporting into Switzerland.

This procedure will not in any way alter the licensing requirements for items to the Soviet Union and other COCOM-proscribed countries.

This rule exempts reexports of supercomputers. The Department will treat cases involving supercomputers on a case-by-case basis.

EFFECTIVE DATE: This rule is effective July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Trade and Competitiveness Act (OTCA), signed by the President on August 23, 1988, amends section 5(a)(4) of the Export Administration Act of 1979 (EAA), requiring the removal of controls over most reexports to COCOM and 5(k) countries. Consistent with the OTCA, the Department of Commerce issued a proposed rule on November 21, 1988 (53 FR 46878) with a request for comments on ways to implement the legislative requirements.

The proposed rule would have expanded the permissive reexport provisions of § 774.2 to allow reexports of U.S. commodities to and among COCOM participating countries, and Switzerland without prior U.S. authorization, provided that the Office of Export Licensing is notified in writing when the U.S. commodities being reexported are above the PRC Green Zone level. In addition, this proposal would not have authorized the use of the permissive reexport provision for reexports to entities that the reexporter knows or has reason to know are controlled-in-fact by Country Groups Q, W, Y, or Z.

The Department received comments from 18 firms and associations. In general, public comments acknowledged that the proposed rule was a positive step toward reducing unnecessary licensing burdens in order to increase competitiveness of U.S. exports abroad. However, most commenters expressed reservations that the proposal severely limited the usefulness of the provision for U.S. controlled commodities moved to and among COCOM participating countries.

Some commenters objected to one provision of the proposed rule under which a party that reexports U.S. commodities not identified in any of the Advisory Notes in the Commodity Control List must submit a reexport notification in writing to the Department, no later than the next business day following shipment and by a means intended to effect delivery within five days of transmission. With two exceptions, the final rule removes the notification requirement if reexports are between COCOM participating countries, Finland, and Switzerland. Although this final rule retains the notification requirement for reexports into COCOM, Finland and Switzerland from other countries, it is modified to a more sensitive level of technology. Specifically, this final rule requires notification only if the commodities are identified in Supplement No. 1 or 4 to Part 773. In addition, the notification reports need not be sent until the second business day following shipment. The notification reports are to be sent by airmail or another means that will provide equally expeditious delivery.

Some commenters observed that the Act addresses "goods and technology" while the proposal dealt only with goods. BXA is revising the technical data regulations and will address reexports of technology in that separate document.

The proposed rule would not have made this permissive reexport provision available when the reexporter knows or has reason to know that the shipment is intended for persons or entities that are controlled-in-fact by governments of Country Groups Q, W, Y, or Z. Many commenters expressed concern that other COCOM countries do not have the same restriction and that these unilateral controls placed an unfair restriction on U.S. competitiveness. This final rule removes the restriction in its entirety.

In addition, the proposed rule specified Switzerland as the only non-COCOM country eligible to benefit from the permissive reexport provision. Many commenters questioned why only Switzerland was included; they believed that Congress intended to include other countries for eligibility. The EAA provides for the exercise of judgment as to whether a country's export controls are comparable in practice to those of COCOM participating countries. The Department of Commerce can also treat a country like a COCOM participating country in some or all respects under the EAR without having determined that the country's export controls are fully comparable in practice to the COCOM system. Because of the continued improvement in its export controls, this final rule adds Finland on this discretionary basis as a country to which this permissive reexport provision will apply. Possible extension to other countries will be considered.

The Department will monitor the effectiveness of the notification requirement to determine the extent to which such requirement should be continued or modified. The Department estimated that if the general license had been in effect in FY 1988, approximately 11,214 reexport authorization requests representing approximately 11.28 billion dollars would not have been necessary.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule includes a collection of information requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection of information has been approved by the Office of Management and Budget under control number 0694–0052. The proposed rule, published on November 21, 1988 (53 FR 46878) estimated the public reporting burden for the reexport notification collection to average approximately 16 minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The public was encouraged to comment to the Office of Management and Budget on the reporting burden at that time. The Office of Management and Budget and BXA will continue to accept comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden. Comments should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attn: Paperwork Reduction Act Project 0694–0052, Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Nevertheless, to help ascertain the economic impact of the regulation upon the general public, the regulation was issued in proposed form and public comment was solicited. Because this rule was originally issued in proposed form, it complies with section 13(b) of the Export Administration Act.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

PART 774—[AMENDED]

1. The authority citation for Part 774 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of Dec. 29, 1981, by Pub. L. 99–64 of July 12, 1985, and Pub. L. 100–418 of Aug. 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of Dec. 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of Sept. 9, 1985 (50 FR 36861, Sept. 10, 1985), as affected by notice of Sept. 4, 1986 (51 FR 31925, Sept. 8, 1986); Pub. L. 99–440 of Oct. 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of Oct. 27, 1986 (51 FR 39505, Oct. 29, 1986).

2. Section 774.2 is amended by adding paragraph (k) to read as follows:

§ 774.2 Permissive reexports.

* * * * *

(k) Reexports to and among COCOM participating countries, Finland, and Switzerland

(1) *Except:* (i) Supercomputers; and

(ii) Electronic, mechanical or other devices, as described in ECCN 4517B, primarily useful for surreptitious interception of wire or oral communications.

(2) *Provided* That: (i) Eligible commodities are for use or consumption within a COCOM participating country (as defined in § 774.3(e)(i)(D)(ii)) Finland, or Switzerland, or for reexport from such country in accordance with other provisions of the Export Administration regulations; and

(ii) For reexports into Switzerland, the reexporting party has obtained a Swiss Blue Import Certificate if that document would be required for an identical shipment from the United States.

(3) *Reporting requirement:* (i) For reexports under this § 774.2(k), a reexport notification must be submitted in writing, signed by an authorized representative of the reexporter, to the Office of Export Licensing, P.O. Box 273, Department of Commerce, Washington, DC 20230, Attention: Reexport Notification, for the following:

(A) Reexports of commodities identified in Supplement Nos. 1 or 4 to Part 773 from a country other than a COCOM participating country, Finland, or Switzerland of commodities identified in Supplement Nos. 1 or 4 to Part 773; and

(B) The following equipment, regardless of the country from which the goods are reexported:

(*1*) ECCN 1355A: Lithography equipment for mask and reticle production capable of manufacturing integrated circuits with line width geometries of less than one micron; and

(*2*) ECCN 1357A: Filament winding machines with programs capable of operating in three or more axes specially designed to fabricate composite structures or laminates.

(ii) The reexport notification shall be transmitted to the Office of Export Licensing no later than the second business day following shipment, by airmail or other means intended to effect equally timely delivery.

(iii) The reexport notification shall identify:

(A) The reexporter and the new ultimate consignee;

(B) The type (including the ECCN, if known), quantity and value of the commodity;

(C) The actual or expected date of reexport; and

(D) If known, the original U.S. export license number under which the commodity was exported from the U.S. and the identity of the U.S. party from whom the reexporter received the goods.

3. A parenthetical is added at the end of § 774.2 to read as follows:

(The reporting requirements in paragraph (k) are approved by the Office of Management and Budget under control number 0694–0052).

Dated: July 5, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89–16105 Filed 7–5–89; 2:21 pm]

BILLING CODE 3510–DT–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AC27

Quality Assurance Confidentiality

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending the regulations that provide for the VA quality assurance program. These regulations delineate the responsibilities of VA's Veterans Health Services and Research Administration (VHS&RA) with respect to the conduct of the Quality Assurance (QA) program and establish standards that assure that certain quality assurance records and documents are adequately safeguarded and used only for proper purposes. These amendments amend the medical quality assurance program to include a peer review program, Medical District Initiated Peer Review Organization (MEDIPRO), add occurrence screening to the medical facility level quality assurance activities as a new continuous monitor, and delete credentialing and privileging from the list of mandatory quality assurance activities protected as part of the Systematic Internal Review (SIR) program at VA medical facilities. However, VA facilities will still be required to undertake credentialing and privileging activities.

EFFECTIVE DATE: Sections 17.506(16), 17.507(xvi), 17.517 and 17.518 are effective January 1, 1985. The remainder of these regulations are effective August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Lubran, Chief, Systems Review Staff, Office of Quality Assurance (10QA1), Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 (202) 233–3115.

SUPPLEMENTARY INFORMATION: On October 27, 1988, the Department of Veterans Affairs (formerly the Veterans Administration) published on pages 43452 through 43457 of the **Federal Register** proposed amendments to the VA regulations implementing 38 U.S.C. 3305. These amendments are required to comply with changes to Title 38, United States Code, enacted by the Veterans Benefits and Services Act of 1988 (Pub. L. 100–322) and the Veterans Health Care Amendments of 1985 (Pub. L. 99–166) as well as to include the MEDIPRO program. Title 38, United States Code, section 3305, requires the Secretary of the Department of Veterans Affairs to specify, by regulation, activities which the Department wishes to make part of the VA's medical quality assurance programs for which the records are protected by section 3305. Because this act explicity precludes any activity from being designated as a quality assurance program activity for the purposes of confidentiality unless such designation has been specified in regulation, it has been necessary to develop these regulations.

The Department gave interested parties 30 days to submit comments on the proposed regulations. Some comments were received in response to the notice of proposed rulemaking and have been considered in the final rule. The Secretary has also considered internal Department comments in drafting this final rule as a means of clarifying or interpreting specific regulatory requirements.

Two comments were received which suggested that § 17.506(a), Continuous

Monitoring, be amended to include medical facility-specific service monitors and medical facilitywide monitors. One commenter pointed out that medical facility clinical services are required by the Joint Commission on Accreditation of Healthcare Organizations, an organization which VA contracts with for accreditation purposes, to conduct ongoing monitoring and evaluation of the quality, appropriateness and safety of patient care services. The commenter suggested that §§ 17.506(a)(5) through 17.506(a)(7) be incorporated into a new continuous monitoring element, service level continuous monitors. Another commenter pointed out that medical facilitywide monitors employing generic criteria are used to look at aspects of quality and appropriateness of care that spans all services or quality assurance activities. The Secretary believes that because these comments, in effect, propose additional activities for protection by section 3305 rather than commenting on the changes under consideration, the comments are outside the scope of the proposed regulation and cannot be accepted. The Department, however, will take the suggestions under advisement.

One commenter stated that credentialing and privileging are an integral part of the VA quality assurance program and should not be deleted as one of the five mandatory Health Services Review Organization-Systematic Internal Review (HSRO–SIR) functions. While the Secretary firmly agrees that credentialing and privileging are important elements of the VA medical facility quality assurance program, the confidentiality protections provided by 38 U.S.C. 3305 and these regulations are no longer required for the credentialing and privileging function because of the overriding public interest in permitting access to information about VA practitioner credentials and clinical privileges. Removing credentialing and privileging from these regulations does not alter the medical center requirement to implement the function. The Secretary firmly supports the use of credentialing and privileging as an integral part of the medical facilities' quality assurance activities. These activities are essential to the effective monitoring of the performance and competency of individual practitioners. However, for the purpose of confidentiality, credentialing and privileging are being removed from the medical facilities' HSRO–SIR program, as defined by these regulations. The Department plans to establish policy which would clarify further that credentialing and privileging are fundamental quality assurance activities, and, to provide medical facilities with guidance on the conduct and performance of these activities.

Section 17.516(c) has been amended to state that confidential records protected by a specific statute, such as HSRO records (for example, occurrence screening data) do not lose their statutory protection when examined in the course of a protected HSRO quality assurance activity.

Furthermore, § 17.527(c) states that persons who are legally entitled to have access to records protected by section 3305 and these regulations and who have a need for access to confidential and privileged HSRO records and documents can be authorized access by the VA medical facility director. The Secretary believes that such access is reasonable for the VA medical facility medical staff designated to perform credentialing and privileging activities. (Additionally, § 17.527(c) states that confidential and privileged HSRO records and documents retain confidentiality protections under 38 U.S.C. 3305 when used in the HSRO program.) However, records protected by section 3305 and these regulations may not be used to restrict, reduce or revoke privileges.

The VA has reconsidered whether the "predetermined list of criteria" referenced in § 17.507(xvi), Occurrence Screening, is meant to refer only to criteria specified by the Chief Medical Director in policy directives. Occurrence screening must be performed in accordance with VHS&RA policy directives. The predetermined criteria specified in the present VHS&RA policy are viewed as an appropriate, minimal set of requirements that medical facilities are to establish in their occurrence screening continuous monitoring activity. The Secretary agrees, however, that other criteria may be established and applied by medical facilities; any locally adopted criteria are protected by these regulations, provided the criteria conform to any relevant VHS&RA directives and are approved in advance of implementation by the facility director. This can be accomplished in a variety of ways including, for example, having the facility director specifically approve and adopt in writing the quality assurance plan or individual committee minutes which contain such criteria. The description of the occurrence screening continuous monitoring activity, § 17.507(a)(4)(xvi), has been modified, therefore, to support the Secretary's interpretation of that policy.

Sections 17.514(f) and 17.518(b)(4) have also been added to make clear that contractors evaluating a MEDIPRO activity(ies) or performing a MEDIPRO function are covered by these regulations. VHS&RA is not planning to have any MEDIPRO functions performed under contract at this time.

The proposed rule is adopted as final with the amendments noted above.

VA has determined that these regulations are not a major rule as defined by Executive Order 12291, Federal Regulation. They will not have an effect on the economy of $100 million and will not result in any major increases in costs or prices for anyone; nor will they have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these regulations will not, when promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–602. Pursuant to 5 U.S.C. 605(b), these regulations are, therefore, exempt from the regulatory analysis requirements of sections 603 and 604. The reason for this certification is that the regulations are for the express purpose of implementing laws intended to establish a VA quality assurance program, affect only a small category of confidential VA records, and impose no regulatory burdens on small entities.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: June 21, 1989.

Edward J. Derwinski,

Secretary.

38 CFR, Part 17, MEDICAL, is amended as follows:

PART 17—[AMENDED]

1. Section 17.500 is amended by revising paragraph (b), (c) and (d) to read as follows:

§ 17.500 General.

* * * * *

(b) HSRO is a three faceted program:

(1) Health Services Review Organization-Systematic Internal

Review (HSRO–SIR) is an integrated quality assurance process that is internal to each VA medical facility.

(2) Health Services Review Organization-Medical District Initiated Peer Peview Organization (HSRO/MEDIPRO) is a clinically oriented, medical district based, peer review system of quality of care and resource utilization assessment external to the medical facility.

(3) Health Services Review Organization-Systematic External Review Program (HSRO–SERP) is a systemwide VA review mechanism external to each VA medical facility in which health care evaluators review clinical and administrative aspects of the quality of care in VA medical facilities and the effectiveness of their HSRO–SIR programs. HSRO–SERP may include a review of the effectiveness of HSRO–MEDIPRO programs.

(c) Corrective action on all medical facility problems or recommendations identified by a HSRO–SIR, HSRO–MEDIPRO or HSRO–SERP review will be initiated and implemented at the lowest possible organizational level through existing lines of authority.

(d) HSRO–SIR, HSRO–MEDIPRO and HSRO–SERP program activities will be established, conducted and maintained at Veterans Health Services and Research Administration (VHS&RA) organizational levels as prescribed in these regulations and VA policy.

(Authority: 38 U.S.C. 3305)

2. Section 17.501 is revised to read as follows:

§ 17.501 Departmental responsibility.

(a) The Chief Medical Director is responsible for the implementation, maintenance, and enforcement of these regulations and will ensure that each VHS&RA organizational element maintains an effective and efficient HSRO program as specified in VA policy.

(b) The Director, Office of Quality Assurance, will provide guidance, oversight, and recommendations to the Chief Medical Director concerning the effectiveness of the HSRO program and the need to make improvements.

(c) Each regional director will ensure that HSRO–MEDIPRO is operational in the region and that clinical care and resource utilization problems unresolved at the district level are acted upon. The regional director will monitor and evaluate the implementation of district HSRO–MEDIPRO plans; review HSRO–MEDIPRO minutes and reviews; approve HSRO–MEDIPRO reports; provide necessary followup on HSRO–MEDIPRO program documents; and approve HSRO–MEDIPRO Board appointments.

(d) Each medical district director is responsbile for implementing and supervising the HSRO–MEDIPRO program within the district and for providing administrative and analytical support. The authority for day-to-day planning, coordination, implementing and monitoring compliance with policies and procedures is delegated to the HSRO–MEDIPRO coordinator. Supervision of the HSRO–MEDIPRO staff will be by the medical district director or designee.

(Authority: 38 U.S.C. 3305)

3. Section 17.504 is revised to read as follows:

§ 17.504 Conduct.

(a) Any VA employee participating in HSRO–SIR, HSRO–MEDIPRO or HSRO–SERP activities or having access to confidential and privileged quality assurance records and documents will comply with the requirements of these regulations. Participating employees will exercise prudent and diligent care and act in good faith while gathering and analyzing factual information prior to making any judgment which may reflect adversely on another VA employee or a VA medical facility. Employees will perform their duties in accordance with prevailing standards and procedures to ensure the safety and welfare of VA beneficiaries and others.

(b) Only those employees in supervisory, executive, or HSRO capacities who have sufficient job related needs to study or otherwise use confidential and privileged records and documents should have access to patient or provider specific identification information or to the confidential coding system. Access to HSRO records within the Department is gaverned by § 17.527 of this part.

(c) VA employees, upon voluntary or involuntary termination of VA employment for any reason, will not disclose to any person or organization any HSRO records or documents which are designated as confidential and privileged by 38 U.S.C. 3305 and these regulations.

(Authority: 38 U.S.C. 3305)

4. Section 17.506 is amended by adding paragraph (a)(16) to read as follows:

§ 17.506 Mandatory HSRO–SIR functions and elements.

* * * * *

(a) * * *

(16) Occurrence screening.

* * * * *

5. In § 17.506, paragraph (e) is removed.

6. In § 17.507, paragraph (a)(4)(XVI) is added to read as follows:

§ 17.507 Description of continuous monitoring.

* * * * *

(a) * * *

(4) * * *

(xvi) *Occurrence screening.* This involves screening cases against a predetermined list of criteria concerning the provision of care to patients, which criteria are specified in advance in any policy directive from the Chief Medical Director. Other occurrence screening criteria may be established locally at VA medical facilities, provided that the locally established criteria conform to the relevant VHS&RA occurrence screening policy directives issued by the Chief Medical Director, and that the medical facility director establishes the facility-specific screening criteria in a policy directive in advance of implementation. Criteria may be established when the responsible authority determines that the use of the criteria in occurrence screening will be for the purpose of improving the quality of care in VHS&RA health care facilities, including how use of the criteria are expected to improve the quality of care. Those cases which involve one or more of the occurrences will be reviewed to identify possible problems in patient care. Where appropriate, action will be taken to correct problems identified in individual cases. Cases meeting the criteria will be entered into an ongoing occurrence screening data base which will be reviewed and analyzed regularly to identify patterns which may be problematic. The Chief Medical Director may delete VHS&RA-wide criteria by means of a policy release. Locally established occurrence screening criteria may be removed from the protection of 38 U.S.C. 3305 and these regulations if permitted by VHS&RA policy directives and if the facility director specifically approves their deletion in writing. Criteria may be deleted when the responsible official determines that a basis no longer exists for including the criteria or criterion among the 38 U.S.C. 3305-protected occurrence screens. Criteria will be added and deleted when necessary.

7. Sections 17.511 through 17.513 are added and reserved and § 17.514 is added to read as follows:

§§ 17.511-17.513 [Reserved]

§ 17.514 HSRO-MEDIPRO.

(a) Each medical district, in accordance with any directives from the Chief Medical Director, will develop and establish a written MEDIPRO plan which establishes responsibilities, defines policy and describes procedures and mechanisms necessary to maintain an effective HSRO-MEDIPRO program. The plan will be reviewed annually by the HSRO-MEDIPRO board, updated as appropriate and will address the following subjects:

(1) Purpose of HSRO-MEDIPRO program.

(2) Program objectives.

(3) HSRO-MEDIPRO board structure and functions.

(4) Use of physician/dental advisors.

(5) HSRO-MEDIPRO staff roles and responsibilities.

(6) Meeting schedule and protocol.

(7) Review process.

(8) Plans for periodic reliability checks on HSRO-MEDIPRO staff and physician/dental advisors.

(9) Reporting.

(10) Relationship to other district councils.

(b) HSRO-MEDIPRO provides a means for representative VA health care professionals to evaluate VA medical facility, patient and practitioner records and documents to assess the quality of care and appropriateness of resource utilization. The goal of the HSRO-MEDIPRO program is to foster quality care under a prospective resource allocation methodology. HSRO-MEDIPRO is designed to function as a data driven system which combines data analysis and subsequent chart review to focus peer review activities. HSRO-MEDIPRO is intended to augment and not duplicate existing VA quality assurance activities including HSRO-SIR and HSRO-SERP.

(c) EAch HSRO-MEDIPRO program, in accordance with any directives from the Chief Medical Director, will establish uniform procedures and conduct peer review activities including, but not limited to, the following:

(1) Analyzing data to identify potential problems in quality of care or validity of data and to develop and review objectives on a regular basis. VA data sources include, but are not limited to, Patient Treatment File (PTF), records maintained on the Decentralized Hospital Computer Program (DHCP), tort claims, incident reports, and Automated Management Information System (AMIS). Problem areas may be indicated by statistically significant variations between appropriate medical district, regional or national peer group patterns of care. The following categories are examples of potential problem areas for the purpose of HSRO-MEDIPRO data analysis and focused review and these regulations:

(i) Mortality.

(ii) Interhospital transfers.

(iii) Interservice transfers.

(iv) Inpatient admissions/readmissions.

(v) Applicants found not in need of care.

(vi) One-day inpatient stays.

(vii) Length of stay by Diagnostic Related Group (DRG).

(viii) Discharge planning.

(ix) Appropriateness of levels of care such as acute care, long-term care, and ambulatory care.

(x) Ancillary services.

(2) Selecting topics for focused review. HSRO-MEDIPRO boards, in accordance with any directives from the Chief Medical Director, will select and prioritize topics for review based on medical district, regional and national considerations. Such considerations may include, for example, topics which reflect deviations of clinical indicators from VA system norms; topics which reflect large numbers of patients or serious consequences such as death or disability; topics which are likely to reflect systemwide problems related to resource allocation systems and other VA cost containment efforts; and topics which lend themselves to intervention at the medical center level.

(3) Generating clinical hypotheses and study objectives. Each HSRO-MEDIPRO board and staff will generate clinical hypotheses and study objectives for focused review topics.

(4) Developing criteria. HSRO-MEDIPRO board and staff will develop and/or use specific, objective criteria to guide records review and analysis. A variety of resources may be used in the development of criteria including previously developed criteria and physician and dental advisor expertise.

(5) Conducting focused review and, as necessary, referring records and other documents to physician/dental advisors for peer review. Focused review refers to the review of a well-defined, limited or structured topic by a health professional peer in order to evaluate a potential quality of care problem or opportunity for improvement. Peer review refers to an assessment by health care practitioners of services ordered or furnished by other practitioners in the same professional field.

(6) Sharing findings with VA medical facilities. HSRO-MEDIPRO will provide medical facilities with information relative to quality of care and practice patterns. Such information may include practitioner-specific and aggregate district, region and national data. VA medical facilities will use these findings in their HSRO-SIR program to document statisfactory or superior quality of care and to identify areas where attention should be directed. If necessary, medical centers will take action to correct identified problems or make improvements through appropriate interventions such as education and training of VA medical staff or management. Other HSRO-MEDIPRO information that may be provided to medical facilities includes study criteria, data validation information, HSRO-MEDIPRO study summaries pertaining to the medical center, HSRO-MEDIPRO minutes and quarterly reports, and letters of observation indicating potential problems found in areas other than the topic under consideration for focused review.

(7) Resolving facility disagreement with HSRO-MEDIPRO study findings. Medical facilities may communicate in writing to the HSRO-MEDIPRO board where there is a disagreement over the findings of a HSRO-MEDIPRO study. The HSRO-MEDIPRO board will review all such medical facility documents; unresolved issues will be referred to the appropriate regional director for action.

(8) Providing HSRO-MEDIPRO board followup as necessary. HSRO-MEDIPRO boards, in accordance with any directives from the Chief Medical Director, will conduct followup evaluations of medical center actions after an appropriate period of time has elapsed.

(9) Integrating findings with the appropriate VHS&RA organizational elements. HSRO-MEDIPRO will report periodically on its findings and followup actions to the respective regional director and to the Director, Office of Quality Assurance. Where study findings have implications for planning or resource allocation purposes, communication should occur with the appropriate organizational unit, e.g., the District Planning Board or the District Executive Council.

(d) VA may conduct a health care review(s) of HSRO-MEDIPRO to determine the effectiveness of the HSRO-MEDIPRO program in meeting its objectives, assess compliance with relevant policies and procedures, validate medical record reviews and to accomplish other similar objectives.

(e) Each medical district will have an HSRO-MEDIPRO board consisting of clinically active VA physicians and dentists to conduct HSRO-MEDIPRO activities. The membership and

selection process for the HSRO–MEDIPRO boards will be determined by VA policy directive(s).

(f) A medical district or the VHS&RA may contract in writing with non-VA personnel or entities for the performance of MEDIPRO activities or functions or for an evaluation of MEDIPRO activities or functions. An evaluation of MEDIPRO activities or functions, whether performed by VA personnel or by a contractor, is a MEDIPRO activity.

(Authority: 38 U.S.C. 3305)

§ 17.515 [Removed]

§§ 17.516, and 17.517 [Redesignated as §§ 17.515 and 17.516]

8. a. Section 17.515 is removed, and § 17.516 and § 17.517 are redesignated § 17.515 and § 17.516, respectively.

b. Newly-designated § 17.515 is revised and newly-designated § 17.516 is amended by adding paragraphs (c) and (d) to read as follows:

§ 17.515 HSRO-SERP.

(a) HSRO–SERP is an ongoing review program concerned principally with the quality of patient care provided at each VA medical facility and the effectiveness of its HSRO–SIR program. HSRO–SERP evaluates each VA medical facility service as well as the facility as a whole. The HSRO–SERP review includes a periodic assessment conducted at each VA medical facility by a multidisciplinary peer review team of VA health care professionals. Team members are selected from other VA medical facilities for their expertise in their respective disciplines and their evaluation skills. The HSRO–SERP review may also address the effectiveness of the HSRO–MEDIPRO program.

(b) HSRO–SERP also includes reviews and analyses of HSRO–SIR, HSRO–SERP and HSRO–MEDIPRO documents by VA central office officials.

(c) The HSRO–SERP program is intended to complement other evaluations, reviews and surveys of VA medical facilities that utilize standards and criteria which may be unrelated to the quality of patient care. Such activities are conducted by a variety of agencies and organizations including VA's VHS&RA accrediting bodies such as the Joint Commission on Accreditation of Healthcare Organizations, Federal regulatory agencies, e.g., Nuclear Regulatory Commission, and veterans' organizations.

(Authority: 38 U.S.C. 3305)

§ 17.516 HSRO records and documents.

* * * * *

(C) When reviewed or examined in a HSRO program, confidential records protected by statutes such as 38 U.S.C. 3305; 5 U.S.C. 552a, the Privacy Act; 38 U.S.C. 4132 (drug and alcohol abuse and sickle cell anemia treatment records); and 38 U.S.C. 3301 (veterans' names and addresses), retain whatever confidentiality protection they have under these laws and applicable regulations and will be handled accordingly. To the extent that information protected by 38 U.S.C. 3301 or 4132 is incorporated into HSRO records, the information in the HSRO records is still protected by these statutes.

(d) Records and documents generated by a contractor or consultant in the course of conducting an HSRO program activity or function as specified in these regulations or an evaluation of any HSRO program as specified in these regulations shall be confidential and privileged to the same extent that the records and documents would be confidential and privileged if created by the Department under these regulations.

§ 17.518 [Redesignated as § 17.517]

9. Section 17.518 is redesignated as § 17.517.

10. Newly redesignated § 17.517 is amended by revising paragraph (c) to read as follows:

§ 17.517 HSRO-SIR records and documents.

* * * * *

(c) Continuous monitoring and utilization review functions generate individual, committee or study team minutes, notes, reports and memoranda produced in the process of deliberations by health care evaluators. Such documents are confidential and privileged in their entirety. Individual continuous monitoring and utilization review documents comparing one or more patient's treatment with objective criteria or norms would be such a confidential document. Other memoranda and study documents or records prepared for review by HSRO–SIR committees are confidential and privileged only if they reveal the identity, even by implication, of individual VA employees or other individuals involved in the quality assurance process or the results or outcomes of HSRO–SIR reviews or studies. Summary documents or records which only identify study topics, the period of time covered by the study, criteria, norms, interpretive comments and major overall findings, but which do not identify health care providers, even by implication, are not considered confidential and privileged documents or records under 38 U.S.C. 3305 and these regulations. In addition, occurrence screening records generated in the course of screening cases against either centrally established or locally adopted criteria are protected by 38 U.S.C. 3305 and these regulations. However, the criteria and the documents signed by the Chief Medical Director or facility director establishing them are not protected. After one of the criteria is deleted from the list of occurrence screens protected by 38 U.S.C. 3305 and these regulations, records generated in the course of screening cases against that criterion are not protected by 38 U.S.C. 3305 and these regulations; however, records generated while the particular occurrence screen was protected will retain that protection.

* * * * *

11. In newly-designated § 17.517, paragraph (f) is removed.

12. Section 17.518 is added to read as follows:

§ 17.518 HSRO–MEDIPRO records and documents.

(a) Those records and documents generated by HSRO–MEDIPRO activities in accordance with § 17.514 of this part are confidential and privileged.

(b) HSRO–MEDIPRO records and documents made confidential and privileged as provided by 38 U.S.C. 3305 include the following:

(1) Records and documents which reveal the actual results or outcomes of studies of individual patient care and treatment as compared with clinical criteria or norms or which may identify, even by implication, individual VA patients or employees or other individuals involved in peer review activities. Such studies are based on analyses of data from such sources as the PTF, records maintained on the DHCP and medical records. Those records and documents which are maintained in personnel or similar files are not made confidential and privileged by 38 U.S.C. 3305. 38 U.S.C. 3305 makes confidential and privileged the minutes, notes, reports and other documents produced in the process of deliberations by the HSRO–MEDIPRO board when it reviews the performance of a medical facility or health care professional for the purpose of peer review.

(2) HSRO–MEDIPRO notes, working papers, staff reports and memoranda that contain the deliberations of health care evaluators.

(3) HSRO–MEDIPRO board minutes, memoranda, deliberations, reports, letters, studies or other documents pertaining to HSRO–MEDIPRO peer review activities.

(4) Records, notes, reports, working papers, memoranda, correspondence and all other documents concerning the evaluation of the MEDIPRO program peer review activities. Routine administrative documents, e.g., a letter transmitting a substantive report, but itself not containing any substantive information and not identifying a program participant, are not protected.

(c) Other documents concerning HSRO–SIR reviews or studies prepared for review by HSRO–MEDIPRO staff or board are confidential and privileged only if they reveal the identity, even by implication, of VA employees or others involved in the quality assurance process or the results or outcomes of HSRO–SIR reviews or studies, as provided in § 17.517.

(d) Summary documents or records, other than those discussed in paragraphs (a), (b), and (c) of this section, which only identify study topics, the period of time covered by the study, criteria, norms or a summary of findings, and which do not identify VA patients or employees or others involved in peer review activities, even by implication, are not considered confidential and privileged documents or records under 38 U.S.C. 3305 and these regulations.

(e) Records and documents, to the extent that they are aggregations of statistical data and do not identify, even by implication, individual VA employees or other individuals involved in the peer review process, are not confidential or privileged. Nothing in these regulations shall be construed to authorize or require the withholding of such aggregate statistical data or information from disclosure.

(f) HSRO–MEDIPRO documents must not be filed in a manner by which they can be retrieved by reference to an individual identifier.

(Authority: 38 U.S.C. 3305)

13. Sections 17.523 and 17.524 are revised to read as follows:

§ 17.523 Disclosure authorities.

(a) The VA medical facility director is authorized to disclose any confidential and privileged HSRO–SIR records or documents to other agencies, organizations, or individuals where these regulations expressly provide for disclosure.

(b) The VA medical district director is authorized to disclose any confidential and privileged HSRO–MEDIPRO records or documents to other agencies, organizations, or individuals where these regulations expressly provide for disclosure.

(c) The VA regional director is authorized to disclose any confidential and privileged HSRO–SERP records or documents to other agencies, organizations, or individuals where these regulations expressly provide for disclosure.

(d) The VA Chief Medical Director is authorized to disclose any confidential and privileged HSRO records or documents to other agencies, organizations, or individuals where these regulations expressly provide for disclosure.

(Authority: 38 U.S.C. 3305)

§ 17.524 Appeal of decision to deny disclosure.

When a request for records or documents subject to these regulations is denied by the VA medical facility director, medical district director, regional director or Chief Medical Director, the VA official denying the request will notify the requestor of the right to appeal this decision to the Secretary of the Veterans Affairs within 60 days. The Secretary's decision is the Department's final decision.

(Authority: 38 U.S.C. 3305)

14. Section 17.527 is amended by revising paragraphs (b), (d), (g), and (h), to read as follows:

§ 17.527 Access to HSRO data within the Department.

* * * * *

(b) No individual shall be permitted physical access to privileged and confidential HSRO records and documents identified in §§ 17.517, 17.518 and 17.519 of this part unless such individual has received adequate training and has been informed of the penalties for unauthorized disclosure. Any misuse of confidential and privileged HSRO records or documents shall be reported through the HSRO confidentiality officer to the appropriate VHS&RA official.

* * * * *

(d) A list should be maintained at each medical facility, medical district, region and the central office of those VA employees or others who are authorized access to confidential and privileged HSRO records and documents. Each authorized individual will sign a statement that he or she is aware of the requirements for confidentiality and will not divulge any information in any way to any source or person except in accordance with these regulations.

* * * * *

(g) Confidential and privileged HSRO records and documents shall be maintained in secure filing cabinets and locked when not under personal supervision. A security system for storing, processing, accessing and retrieving automated data will be developed and maintained at each medical facility, medical district, region and VACO. Such security systems will include procedures and internal controls to identify individuals who have authorized access to those data and at what time such access occurred. Adequate internal controls will be developed and maintained so that confidential and privileged data, including automated data, may not be retrieved by an individual identifier(s). Each VA medical facility, medical district, region and the VACO will provide for the periodic review of confidential and privileged HSRO records and documents, including data, to determine whether security is adequate and which, if any, records and documents shall be retained. In general, confidential and privileged HSRO records and documents will be maintained for a minimum of 3 years and may be held longer if needed for HSRO research studies, legal purposes, or related quality assurance purposes.

(h) HSRO–SIR records and documents, as defined in § 17.517 of this part, will be available to HSRO–MEDIPRO staff and board members, the medical district director and other medical district management officials, regional directors and HSRO–SERP team members. HSRO–SIR, HSRO–MEDIPRO and HSRO–SERP records and documents will be available to VA central office management officials working in HSRO functions, service and staff office directors, and assistant chief medical directors.

* * * * *

15. Section 17.534 is amended by revising paragraph (f) to read as follows:

§ 17.534 Authorized disclosure: non-VA requests.

* * * * *

(f) In general, Joint Commission (Joint Commission on Accreditation of Healthcare Organizations) survey teams and similar national accreditation agencies or boards and other organizations requested by VA to consult, assess or evaluate the effectiveness of HSRO–SIR, HSRO–MEDIPRO or HSRO–SERP program activities are entitled to full disclosure of any and all privileged and confidential HSRO records or documents with the following qualifications:

(1) Accreditation agencies which are charged with assessing all aspects of medical facility patient care, e.g., Joint Commission, may have access to all

confidential HSRO records and documents.

(2) Accreditation agencies charged with more narrowly focused review (e.g., College of American Pathologists, American Association of Blood Banks, Nuclear Regulatory Commission, etc.) may have access only to such confidential and privileged HSRO records and documents as are relevant to their respective focus.

* * * * *

[FR Doc. 89-15926 Filed 7-6-89; 8:45 am]
BILLING CODE 8320-01-M

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38 CFR Part 17

RIN 2900-AC66

Health Professional Scholarship Program

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: These regulations implement amendments to the law governing the Department of Veterans Affairs (VA) health professional scholarship program made by the Veterans' Benefits and Services Act of 1988. These amendments to the VA Health Professional Scholarship Program (38 CFR Part 17) identify generic requirements for awarding scholarships, revise the method for determining the length of service obligation for scholarship participants provided awards to attend school full-time, indicate that when selecting scholarship participants priority will be given to students entering their final year of education or training, and remove the provision for scholarship participants to serve periods of obligated service in another Federal entity or the Armed Forces, if the Secretary of Veterans Affairs, the head of another Federal department and the participant consent to such service. The intended effect is to permit scholarship awards in additional disciplines, and change the length of service obligation to one year service for each year of scholarship support.

EFFECTIVE DATE: May 20, 1988, the effective date of Pub. L. 100-322.

FOR FURTHER INFORMATION CONTACT: Charlotte Beason, Ed.D., Director, Health Professional Scholarship Program (14N), Office of Academic Affairs, Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3588.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs Health Care Amendments of 1980 (Pub. L. 96-330) established the Department of Veterans Affairs Health Professional Scholarship Program to assist in providing an adequate supply of trained physicians and nurses for VA and for the nation and, if needed by VA, other specified health-care professionals. The Veterans' Benefits and Services Act of 1988 (Pub. L. 100-322) amended the Scholarship Program by permitting scholarship awards to students in additional health disciplines, by changing length of service obligation incurred by scholarship participants, and by changing priority for selecting participants. These new regulations implement section 322 of Pub. L. 100-322 enacted May 20, 1988.

On January 18, 1989, proposed regulations to 38 CFR Part 17 implementing Pub. L. 100-322 were published in the **Federal Register** on pages 1950 through 1953 (54 FR 1950). Interested persons were given 30 days to submit comments, suggestions, or objections. The Department of Veterans Affairs received three letters. Each writer suggested that § 17.600 of the proposed regulations be modified to list all eligible health disciplines. The final regulations have been changed to list all disciplines for which VA may award scholarships if they are needed to relieve staff shortages.

Two writers commented that § 17.600 implies VA has authority to award scholarships to physical therapy students without notifying the Committees on Veterans' Affairs of the Senate and House of Representatives. The law requires VA to notify the Committees prior to awarding initial scholarships to students in any discipline other than nursing or medicine. VA does not have authority to use the regulation to overturn a provision of the law.

Two writers suggested that the definition of degree in § 17.601(h) include the doctor of optometry degree. Doctor of optometry and doctor of podiatry degrees have been added in final regulations.

One writer suggested public interest would be served if specific VA criteria for determining existence of staff shortages in various disciplines, a statement describing VA's policy for determining disciplines, and a listing of factors and personnel data used to decide upon eligible disciplines were to be made publicly available in the **Federal Register.** We do not believe it is necessary for criteria to actually be published in the **Federal Register** since the regulations make reference to the existence of such criteria.

One writer suggested that eligible degrees be published annually in the **Federal Register.** Information about eligible degrees is broadly disseminated by VA on an annual basis through a press release to the general public and through program announcements to professional associations and all accredited colleges/universities. It is indeed intended by VA to continue to broadly announce the program and; consequently, we do not believe it is necessary that eligible degrees be published annually in the **Federal Register.**

VA finds that for good cause, the regulations should be made effective retroactively to May 20, 1988, the effective date of Pub. L. 100-322, which the regulations implement. Good cause for a retroactive effective date exists because a delayed effective date would be contrary to the public interest. The law which the regulations implement was liberalizing in that it extended scholarship benefits to new groups of students. Moreover, Congress intended that it be implemented as soon as possible. To achieve the maximum benefit of the legislation, it was implemented prior to amendment of implementing regulations. A retroactive effective date will ratify actions to implement the program prior to publication of the final regulations, and will simplify administration of the law.

These final regulations have been designated as non-major under the criteria of Executive Order 12291, Federal Regulation. The regulations will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices or consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act 5 U.S.C. 601-612. These final regulations will be directed to individuals who apply for and are selected for VA Health Professional Scholarship Program awards. They will, therefore, have no significant direct impact on small entities.

The Catalog of Federal Domestic Assistance number for this program is 64.023.

List of Subjects in 38 CFR Part 17

Health professionals, scholarships and fellowships.

Approved: June 19, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 17, MEDICAL, is amended to read as follows:

PART 38—[AMENDED]

1. Section 17.600 is revised to read as follows:

§ 17.600 Purpose.

The purpose of §§ 17.600 through 17.612 is to set forth the requirement for the award of scholarships under the Department of Veterans Affairs Health Professional Scholarship Program to students receiving education or training in a direct or indirect health-care services discipline to assist in providing an adequate supply of such personnel for VA and for the Nation. If necessary, VA may award scholarships to individuals training to become a physician assistant, expanded function dental auxiliary, clinical or counseling psychologist, certified or registered respiratory therapist, licensed physical therapist, or licensed practical or vocational nurse. If necessary, the Secretary may designate additional fields of education or training for which scholarships may be awarded, provided they involve direct patient-care services, or services incident to direct patient-care services.

(Authority: Pub. L. 96–330; 38 U.S.C. 4141–4146, as amended by Pub. L. 97–251 and Pub. L. 100–322)

* * * * *

2. a. In § 17.601, paragraph (a) is amended by removing the words "full-time."

b. In § 17.601, paragraphs (b), (e), (f), (h), (i), (m), (o), (r), and the authority citation in paragraph (u), are revised to read as follows:

§ 17.601 Definitions.

* * * * *

(b) "Act" means the Veterans Administration Health-Care Amendments of 1980, Pub. L. 96–330, (38 U.S.C. 4141–4146), as amended by Pub. L. 97–251, the Veterans Administration Health-Care Programs Improvement and Extension Act of 1982, Pub. L. 99–576, Veterans Benefits Improvement and Health Care Authorization Act of 1986, and Pub. L. 100–322, the Veterans' Benefits and Services Act of 1988.

(Authority: Pub. L. 96–330; 38 U.S.C. 4141–4146, as amended by Pub. L. 97–251; Pub. L. 99–576 and Pub. L. 100–322)

* * * * *

(e) "Secretary" means the Secretary of Veterans Affairs or designee.

(f) "Chief Medical Director" means the Chief Medical Director of the Veterans Health Services and Research Administration (VSH&RA), or designee.

* * * * *

(h) "Degree" means a course of study leading to a doctor of medicine, doctor of osteopathy, doctor of dentistry, doctor of optometry, doctor of podiatry, or a baccalaureate or master's degree in other direct or indirect health-care service disciplines needed by VA.

(Authority: 38 U.S.C. 4302(a)(1))

(i) "Full-time student" means an individual pursuing a course of study leading to a degree who is enrolled for a sufficient number of credit hours in any academic term to complete the course of study within not more than the number of academic terms normally required by the school, college or university. If an individual is enrolled in a school and is pursuing a course of study which is designed to be completed in more than 4 years, the individual will be considered a full-time student for only the last 4 years of the course study.

* * * * *

(m) "Scholarship Program" or "Scholarship" means the Department of Veterans Affairs Health Professional Scholarship Program authorized by section 216 of the Act.

* * * * *

(o) "School" means an academic institution which (1) provides training leading to a degree in a direct or indirect health-care service discipline needed by the Department of Veterans Affairs, and (2) which is accredited by a body or bodies recognized for accreditation by the Secretary.

(Authority: 38 U.S.C. 4302(a)(1)(2))

* * * * *

(r) "Part-time student" means an individual who is a Department of Veterans Affairs employee permanently assigned to a Department of Veterans Affairs health care facility who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time but not less than half-time basis.

* * * * *

(u) * * *

(Authority: 38 U.S.C. 4333)

* * * * *

3. In § 17.602, paragraph (a)(2) is revised, and the authority citations following paragraphs (a)(5), (b)(2) and (c) are revised, to read as follows:

§ 17.602 Eligibility.

(a) * * *

* * * * *

(2) Be pursuing a degree annually designated by the Secretary for participation in the Scholarship Program;

(Authority: 38 U.S.C. 4302(a)(1), 4312(b)(1))

* * * * *

(5) * * *

(Authority: 38 U.S.C. 4302(a))

(b) * * *

(2) * * *

(Authority: 38 U.S.C.- 4312(c)(3)(B))

(c) * * *

(Authority: 38 U.S.C. 4302(b))

* * * * *

4. Section 17.603 is revised to read as follows:

§ 17.603 Availability of scholarships.

Scholarships will be awarded only when necessary to assist the Department of Veterans Affairs in alleviating shortages or anticipated shortages of personnel in particular health professions. The existence of a shortage of personnel will be determined in accordance with specific criteria for each health profession, promulgated by the Chief Medical Director. The Secretary has the authority to determine the number of scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and part-time students.

(Authority: 38 U.S.C. 4312(b)(4) and 4303(b)(1))

* * * * *

5. In § 17.604, the authority citation is revised to read as follows:

§ 17.604 Application for the scholarship program.

* * * * *

(Authority: 38 U.S.C. 4312(c)(1)(B))

6. In § 17.605, paragraph (a), the authority citation in paragraph (a)(2), paragraph (b)(1), the authority citation in paragraph (b)(4), and the authority citations in paragraph (d), and (e)(2), are revised to read as follows:

§ 17.605 Selection of participants.

(a) *General.* In deciding which Scholarship Program applications will be approved by the Secretary, priority will be given to applicants entering their final year of education or training and priority will be given to applicants who previously received scholarship awards and who meet the conditions of paragraph (d) of this section. Except for continuation awards (see paragraph (d)

of this section), applicants will be evaluated under the criteria specified in paragraph (b) of this section. A situation may occur in which there are a larger number of equally qualified applicants than there are awards to be made. In such cases, a random method may be used as the basis for selection. In selecting participants to receive awards as part-time students, the Secretary may, at the Secretary's discretion—

(Authority: 38 U.S.C. 4312(b)(5))

* * * * *

(2) * * *

(Authority: 38 U.S.C. 4303(d))

(b) * * *

(1) Work/volunteer experience, including prior health care employment and Department of Veterans Affairs employment;

* * * * *

(4) * * *

(Authority: 38 U.S.C. 4333)

* * * * *

(d) * * *

(Authority: 38 U.S.C. 4312(c)(1)(A) and 4314(3))

(e) * * *

(2) * * *

(Authority: 38 U.S.C. 4303(d))

* * * * *

7. a. In § 17.606, paragraph (b) is amended by removing the word "will" in the first sentence, and replacing it with the word "may".

b. In § 17.606, the authority citation in paragraph (a)(1), paragraph (a)(3), and the authority citations in paragraphs (a)(5), (a)(6), and (b) are revised to read as follows:

§ 17.606 Award procedures.

(a) * * *

(1) * * *

(Authority: 38 U.S.C. 4336)

* * * * *

(3) The Secretary may determine the amount of the stipend paid to participants, whether part-time students or full-time students, but that amount may not exceed the maximum amount provided for in 38 U.S.C. 4313(b).

* * * * *

(5) * * *

(Authority: 38 U.S.C. 4314(2))

(6) * * *

(Authority: 38 U.S.C. 4313(c))

(b) * * *

(Authority: 38 U.S.C. 4333)

8. a. In § 17.607, paragraph (e), (e)(1), and (e)(2) are removed, and paragraph (f) is redesignated as paragraph (e).

b. In § 17.607, paragraphs (a), (b)(1), the authority citation in paragraph (b)(2), paragraphs (c) and (d), and the authority citation following newly-designated paragraph (e), are revised to read as follows:

§ 17.607 Obligated service.

(a) *General.* Except as provided in paragraph (d) of this section, each participant is obligated to provide service as a Department of Veterans Affairs employee in full-time clinical practice in the participant's discipline in an assignment or location determined by the Secretary.

(Authority: 38 U.S.C. 4316(a))

(b) * * *

(1) Except as provided in paragraph (b)(2) of this section, a participant's obligated service shall begin on the date the Secretary appoints the participant as a full-time VA employee in the Department of Veterans Affairs Veterans Health Services and Research Administration in a position for which the degree program prepared the participant. The Secretary shall appoint the participant to such position within 60 days after the participant's degree completion date, or the date the participant becomes licensed in a State to practice in the discipline for which the degree program prepared the participant, whichever is later. At least 60 days prior to the appointment date, the Secretary shall notify the participant of the work assignment, its location, and the date work must begin.

(2) * * *

(Authority: 38 U.S.C. 4316 (b) and (c))

(c) *Duration of service.* The period of obligated service for a participant who attended school as a full-time student shall be 1 year for each school year or part thereof for which the participant received a scholarship award under these regulations. The period of obligated service for a participant who attended school as a part-time student shall be reduced from that which a full-time student must serve in accordance with the proportion that the number of credit hours carried by the part-time student in any school year bears to the number of credit hours required to be carried by a full-time student, whichever is the greater, but shall be a minimum of 1 year of full-time employment.

(Authority: 38 U.S.C. 4312(c)(1)(B) and (3)(A))

(d) *Location for service.* The Secretary reserves the right to make final decisions on location for service obligation. A participant who received a scholarship as a full-time student must be willing to move to another geographic location for service obligation. A participant who received a scholarship as a part-time student may be allowed to serve the period of obligated service at the health care facility where the individual was assigned when the scholarship was authorized.

(Authority: 38 U.S.C. 4316(a))

(e) * * *

(Authority: 38 U.S.C. 4316(b)(3)(A)(ii))

9. a. In § 17.608, paragraph (e) is removed, and paragraph (f) is redesignated as paragraph (e).

b. In § 17.608, paragraphs (a), (b), (c)(1), the authority citation in paragraph (c)(2), paragraph (d), and the authority citation in newly-designated paragraph (e), are revised to read as follows:

§ 17.608 Deferment of obligated service.

(a) *Request for deferment.* A participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, may request deferment of obligated service to complete an approved program of advanced clinical training. The Secretary may defer the beginning date of the obligated service to allow the participant to complete the advanced clinical training program. The period of this deferment will be the time designated for the specialty training.

(Authority: 38 U.S.C. 4316(a)(A)(i))

(b) *Deferment requirements.* Any participant whose period of obligated service is deferred shall be required to take all or part of the advanced clinical training in an accredited program in an educational institution having an Affiliation Agreement with a Department of Veterans Affairs health care facility, and such training will be undertaken in a Department of Veterans Affairs health-care facility.

(Authority: 38 U.S.C. 4316(b)(u))

(c) * * *

(1) At the rate of one-half of a calendar year for each year of approved clinical training (or a proportionate ratio thereof) if the training is in a specialty determined to be necessary to meet health care requirements of the Veterans Health Services and Research Administration; Department of Veterans Affairs; or

(2) * * *

(Authority: 38 U.S.C. 4316(b)(u)(B))

(d) *Altering deferment.* Before altering the length or type of approved advanced clinical training for which the period of obligated service was deferred under paragraphs (a) or (b) of this section, the participant must request and obtain the Secretary's written approval of the alteration.

(Authority: 38 U.S.C. 4333)

(e) * * *

(Authority: 38 U.S.C. 4316(b)(2))

* * * * *

§ 17.609 [Amended]

10. In § 17.609, in the last sentence, remove the words "He or she" and insert in their place, the words "A physician".

11. In § 17.610, the authority citation in paragraph (a), paragraph (b)(4), the first sentence in paragraph (c), and the authority citation in paragraph (c), are revised to read as follows:

§ 17.610 Failure to comply with terms and conditions of participation.

(a) * * *

(Authority: 38 U.S.C. 4317(a))

(b) * * *

(4) Fails to become licensed to practice in the discipline for which the degree program prepared the participant, if applicable, in a State within 1 year from the date such person becomes eligible to apply for State licensure; or

(Authority: 38 U.S.C. 4317(b)(4))

(5) * * *

(Authority: 38 U.S.C. 4317(b))

(c) Participants who breach their contracts by failing to begin or complete their service obligation (for any reason) other than as provided for under paragraph (b) of this section are liable to repay the amount of all scholarship funds paid to them and to the school on their behalf, plus interest, multiplied by three, minus months of service obligation satisfied, as determined by the following formula:

$$\left(A = \frac{t - s}{t} \right)$$

in which: * * *

(Authority: 38 U.S.C. 4317(c)(1)(2))

* * * * *

12. In §17.611, the authority citation is revised to read as follows:

§ 17.611 Bankruptcy.

* * * * *

(Authority: 38 U.S.C. 4334(c))

13. In §17.612, the authority citations in paragraphs (a), (b)(2), (c), and (d), are revised to read as follows:

§ 17.612 Cancellation, waiver, or suspension of obligation.

(a) * * *

(Authority: 38 U.S.C. 4334(a))

(b) * * *

(2) * * *

(Authority: 38 U.S.C. 4334(b))

(c) * * *

(Authority: 38 U.S.C. 4334(b))

(d) * * *

(Authority: 38 U.S.C. 4334(b))

[FR Doc. 89-15927 Filed 7-6-89; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

RIN: 2900-AD86

Veterans Education; Procedural Due Process

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) has been reviewing regulations for the purpose of improving due process procedures. These amended regulations provide that in certain instances if VA does not furnish claimants or beneficiaries with notice of the time limits within which they are required to act, those time limits do not apply until notice is provided. These regulations will provide increased due process to veterans and eligible persons affected by these time limits.

EFFECTIVE DATE: August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Alan R. Zoeckler, Acting Assistant Director for Policy and Program Administration, Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, 233-2092.

SUPPLEMENTARY INFORMATION: On pages 5640 and 5641 of the **Federal Register** of February 6, 1989 (54 FR 5640), there was published a notice of intent to amend Part 21 in order to provide increased due process to veterans and eligible persons. Interested persons were given 30 days to provide comments, suggestions, or objections. VA received no comments, suggestions or objections. Accordingly, VA is making these regulations final with some technical amendments of a minor nature which reflect the change in status to a Department (see 54 FR 10476).

VA has determined that these final regulations do not contain a major rule as that term is defined by Executive Order 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the final regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the final regulations affect only individuals. They will have no significant economic impact on entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance number for the programs affected by these regulations are 64.111 and 64.117)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 19, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

1. In § 21.1032, paragraph (c) is revised and an authority citation added to read as follows:

§ 21.1032 Time limits.

* * * * *

(c) *Failure to furnish claim or notice of time limit.* (1) VA's failure to furnish any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the periods allowed for these actions.

(2) VA's failure to furnish a veteran or serviceperson notice of the time limit within which evidence must be submitted to perfect a claim, or notice of the time limit within which to challenge an adverse VA decision shall extend the time limit for such action in accordance with the provision of § 3.110 of this chapter.

(Authority: 38 U.S.C. 3001, 3013)

2. In § 21.3032, paragraph (b) is revised and an authority citation is added to read as follows:

§ 21.3032 Time limits.

* * * * *

(b) *Failure to furnish claim or notice of time limit.* (1) VA's failure to furnish any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the periods allowed for these actions.

(2) VA's failure to furnish an eligible person notice of the time limit within which evidence must be submitted to perfect a claim, or notice of the time limit within which to challenge an adverse VA decision, shall extend the time limit for such action in accordance with the provisions of § 3.110 of this chapter.

(Authority: 38 U.S.C. 3001, 3013)

* * * * *

3. In § 21.4131, paragraphs (e)(1)(i)(B), (e)(1)(ii)(B), (e)(1)(iii), (e)(2)(i) (B) and (C) are revised and an authority citation is added at the end of paragraph (e)(2)(i)(C) to read as follows:

§ 21.4131 Commencing dates.

* * * * *

(e) *Increase for dependent—Chapter 34.*

(1) * * *

(i) * * *

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limit for submitting it.

(ii) * * *

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limit for submitting it.

(iii) The effective date will be the date VA receives all necessary evidence, if that evidence is received more than 1 year from the date VA requested it, and informed the veteran of the time limit for submitting it.

* * * * *

(2) * * *

(i) * * *

(B) Date notice is received of the dependent's existence if evidence is received within 1 year of the date VA requested the evidence and informed the veteran of the time limit for submitting the evidence.

(C) Date VA receives evidence if this date is more than 1 year after the date VA requested the evidence and informed the veteran of the time limit for submitting it.

(Authority: 38 U.S.C. 3010(n))

4. In § 21.4136, paragraph (k)(1)(ii) is revised to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

* * * * *

(k) * * *

(1) * * *

(ii) The veteran submits the circumstances in writing to VA within 1 year from the date VA notifies the veteran that he or she must submit the mitigating circumstances, and informs the veteran of the time limit for submitting them.

(Authority: 38 U.S.C. 1780(a))

* * * * *

5. In § 21.4137, paragraph (h)(1)(ii) is revised to read as follows:

§ 21.4137 Rates; educational assistance allowance; 38 U.S.C. Chapter 35.

* * * * *

(h) * * *

(1) * * *

(ii) The eligible person submits the circumstances in writing to VA within 1 year from the date VA notifies the eligible person that he or she must submit the mitigating circumstances, and informs the eligible person of the time limit for submitting them.

(Authority: 38 U.S.C. 1780(a))

* * * * *

[FR Doc. 89-15928 Filed 7-6-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3612-7]

North Carolina; Order To Recommence Proceedings to Determine Whether to Withdraw Hazardous Waste Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice of Continuance of hearing to determine whether to withdraw hazardous waste program approval.

SUMMARY: On April 20, 1989 EPA issued an Order to Recommence Proceedings to Determine Whether to Withdraw Hazardous Waste approval of North Carolina's Hazardous Waste Management program (54 FR 15940). This notice schedules a continuance of the hearing which was held on May 31–June 1, and June 5–8, 1989 in Raleigh, North Carolina.

DATE: The continuance of these proceedings will be held on July 18–21, 1989 and July 24–28, 1989 from 9:00 a.m. to 5:00 p.m.

ADDRESS: Radisson Plaza Hotel, 420 Fayetteville Street Mall, Raleigh, North Carolina 27601.

FOR FURTHER INFORMATION CONTACT: For further information contact Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

Joe R. Franzmathis,

Acting Regional Administrator.

[FR Doc. 89-16001 Filed 7-6-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-263; RM-6341]

Radio Broadcasting Services; Brooklyn, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Randy E. Henry, substitutes Channel 256C2 for Channel 257A at Brooklyn, Iowa, and modifies its license for Station KSKB to specify the higher powered channel. Channel 256C2 can be allotted to Brooklyn in compliance with the Commission's minimum distance separation requirements and can be used at site specified in Station KSKB's license. The coordinates for this allotment are North Latitude 41–42–36 and West Longitude 92–27–54. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–263, adopted June 15, 1989, and released June 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Brooklyn, Iowa, is amended by removing Channel 257A and adding Channel 256C2.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15976 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-262; RM-6340]

Radio Broadcasting Services; Laughlin, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John Brush, allots Channel 228C to Laughlin, Nevada, as the community's second local FM service. Channel 228C can be allotted to Laughlin in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.7 kilometers (3.5 miles) east to avoid a short-spacing to Stations KRCK, Channel 229B, Coachella, California, and KXTZ, Channel 231C, Henderson, Nevada. The coordinates for this allotment are North Latitude 35-09-03 and West Longitude 114-30-49. Mexican concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective August 14, 1989. The window period for filing applications will open on August 15, 1989, and close on September 14, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-262, adopted June 15, 1989, and released June 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Laughlin, Nevada, is amended by adding Channel 228C.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15977 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-366; RM-6260, RM-6531]

Radio Broadcasting Services; Jupiter and White City, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dennis L. Johnson and U.S. Three Broadcasting Corporation, allots 288A to Jupiter, Florida, as the community's second local FM service, and Channel 284A to White City, Florida, as the community's first local FM service, respectively. Channel 288A can be allotted to Jupiter in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 25-56-30 and West Longitude 80-05-36. Channel 284A can be allotted to White City with a site restriction of 8.6 kilometers (4.2 miles) north to avoid a short-spacing to Station WEAT-FM, Channel 282C, West Palm Beach, Florida. The coordinates for this allotment are North Latitude 27-26-03 and West Longitude 80-20-41. With this action, this proceeding is terminated.

DATES: Effective August 14, 1989. The window period for filing applications will open on August 15, 1989, and close on September 14, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-366, adopted June 15, 1989, and released June 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.032 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by amending the entry for Jupiter, Florida, by adding Channel 288A, and by adding the following entry, White City, Florida, Channel 284A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15975 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 88-576; FCC 89-208]

Private Land Mobile Radio Services, Secondary Fixed Tone Signaling

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order that extends tone signaling capability to all Part 90 radio services. Licensees may use their base/mobile frequencies for fixed tone signaling operations on a secondary basis for any use consistent with the Rules. Criteria for message duration, message repetition, and automatic transmitter deactivation are established. Existing signaling systems are grandfathered until December 31, 1999 under the rules in effect at the time of signaling system authorization.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 88–576, adopted June 15, 1989, and released August 14, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M St. NW., Suite 140, Washington, DC, telephone (202) 857–3800.

Summary of Report and Order

1. In response to petitions for rule making filed by Forest Industries Telecommunications and the Manufacturers Radio Frequency Advisory Committee, a Notice of Proposed Rule Making was released proposing to amend § 90.235 of the Rules to permit analog and digital secondary tone signaling in all Part 90 radio services with certain message length and repetition requirements. After consideration of the comments, final rules have been adopted concerning tone signaling operations.

2. Over the years, the Commission has authorized tone signaling capability in a limited number of Part 90 radio services to provide various point-to-point alarm and operational functions. Since the Commission cannot find any basis for distinguishing the tone signaling needs of one radio service from another, it is extending the benefits of secondary tone signaling operations to all Part 90 radio services.

3. The new rules establish a maximum tone signaling message duration of two seconds which may be repeated three times at any interval. To prevent a "stuck" tone signaling transmitter from disrupting voice communications, automatic transmitter deactivation is required after an r.f. carrier remains on for more than three minutes or after five tone signaling transmissions for the same event. Licensees may utilize tone signaling, on a secondary basis, for any purpose consistent with the Rules. Existing signaling systems will be permitted to operate until December 31, 1999 under signaling criteria in effect at the time of the signaling system authorization.

Final Regulatory Flexibility Act Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as a part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction Act Statement

5. The rules established herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed upon the public.

Ordering Clauses

6. Accordingly, *It is ordered* That, pursuant to sections 4(e) and 302(r) of the Communications Act of 1934, as amended, Part 90 of the Commission's Rules are amended as set forth in the Appendix.

7. *It is further ordered* That the Rules in this *Report and Order* will become effective on

8. *It is further ordered* That this proceeding is terminated.

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Secondary fixed tone signaling.

Amendatory Text

47 CFR Part 90 is amended as follows:

PART 90—[AMENDED]

1. The authority citation for Part 90 continues to read as follows:

Authority: Section 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 90.235 is revised in its entirety to read as follows:

§ 90.235 Secondary fixed signaling operations.

Fixed operations may, subject to the following conditions, be authorized on a secondary basis for voice, tone or impulse signaling on a licensee's mobile service frequency(ies) above 25 MHz within the area normally covered by the licensee's mobile system. Voice signaling will be permitted only in the Police Radio Service.

(a) The bandwidth shall not exceed that authorized to the licensee for the primary operations on the frequency concerned.

(b) The output power shall not exceed 30 watts at the remote site.

(c) A1D, A2D, F1D, F2D, G1D and G2D emissions may be authorized. In the Police Radio Service, A3E, F1E, F2E, F3E, G1E, G2E, or G3E emissions may also be authorized.

(d) Except for those systems covered under paragraph (e) of this section, the maximum duration of any non-voice signaling transmission shall not exceed 2 seconds and shall not be repeated more than 3 times. Signaling transmissions may be staggered at any interval or may be continuous. In the Police Radio Service, the maximum duration of any voice signaling transmission shall not exceed 6 seconds and shall not be repeated more than 3 times.

(e) Until December 31, 1999, for systems in the Public Safety Radio Services authorized prior to June 20, 1975, and in the Power and Petroleum Radio Services authorized prior to June 1, 1976, the maximum duration of any signaling transmission shall not exceed 6 seconds and shall not be repeated more than 5 times. For Power Radio Service systems authorized between June 1, 1976 and (effective date of the rules), a signaling message duration shall not exceed 2 seconds and shall not be repeated more than 5 times. Such systems include existing facilities and additional facilities which may be authorized as a clear and direct expansion of existing facilities. After December 31, 1999, all signaling systems shall be required to comply with the two second message duration and three repetition requirements.

(f) Systems employing automatic interrogation shall be limited to non-voice techniques and shall not be activated for this purpose more than 10 seconds out of any 60 second period. This 10 second timeframe includes both transmit and response times.

(g) Automatic means shall be provided to deactivate the transmitter in the event the r.f. carrier remains on for a period in excess of 3 minutes or if a transmission for the same signaling function is repeated consecutively more than five times.

(h) Fixed stations authorized pursuant to the provisions of this section are exempt from the requirements of §§ 90.137(b), 90.425, and 90.429.

(i) Base, mobile, or mobile relay stations may transmit secondary signaling transmissions to receivers at fixed locations subject to the conditions set forth in this section.

(j) Under the provisions of this section, a mobile service frequency may not be used exclusively for secondary signaling.

(k) The use of secondary signaling will not be considered in whole or in part as a justification for authorizing additional frequencies in a licensee's land mobile radio system.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-15974 Filed 7-6-89; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 89

[Docket No. 46375; Amdt. 89-2]

RIN 2105-AB51

Referral of Debts to the IRS for Tax Refund Offset

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule; request for comments.

SUMMARY: These regulations explain the procedures that the Department of Transportation (DOT) will follow when referring delinquent debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of taxpayers owing money to DOT. DOT became eligible in March to participate in the IRS Federal Tax Refund Offset Program. These regulations are authorized by the Deficit Reduction Act of 1984 which allows the Department to collect debts by means of offset from income tax refunds of persons owing money to DOT provided certain conditions are met.

DATES: This rule becomes effective August 7, 1989. Comments should be filed on or before September 5, 1989. Late filed comments will be considered to the extent practical.

ADDRESSES: Send comments to Docket Clerk, Docket No. 46375 Room 4107, Department of Transportation, 400 Seventh Street SW., Washington DC 20590. Comments are available for public examination at that address Monday through Friday except Federal holidays, from 9:00 to 5:30 p.m. Commenters wishing the Department to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 46375". The postcard will be date/time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Department of Transportation, Office of the General Counsel, 400 7th Street SW., Room 10102, Washington, DC 20590, (202) 366-9161.

SUPPLEMENTARY INFORMATION: This rulemaking adopts detailed procedures for referring past-due legally enforceable debts to the IRS for offset against the income tax refunds of taxpayers owing debts to DOT. These procedures replace general procedures previously adopted in 49 CFR 89.33 (53 FR 51237; December 21, 1988).

These regulations are authorized by Section 3720A of Title 33 of the United States Code which codified portions of the Deficit Reduction Act of 1984. The purpose of the Act, in part, is to improve the ability of the Government to collect money owed it, while adding notice requirements and other protections applicable to the Government's relationship to the debtor. Section 2653 of the Act directs any Federal agency that is owed a past-due legally enforceable debt to notify the Secretary of Treasury.

Before the Government may offset, it must attempt to: (1) Notify the debtor that the agency proposes to refer the debt for a tax refund deduction; (2) give the debtor 60 days from the date of the attempted notification to present information that all or part of the debt is not past-due or legally enforceable; and (3) consider any information that may be presented by the debtor in determining whether any amount of such debt is past-due and legally enforceable. The IRS regulations are published at 26 CFR 301.6402-6T. The current IRS program for tax refund offsets extends through January 10, 1994.

These regulations provide that before the Department refers a debt to the IRS, a notice (Notice of Intent) will be sent to the debtor. The Notice of Intent will inform the debtor of the amount of the debt and unless the debt is repaid within 60 days from the date of the Notice of Intent, the Department will refer the debt to the IRS for offset against any tax refund payable to the debtor. In addition, the Notice of Intent will state that the debtor may during the 60-day period present information that all or part of the debt is not past-due or legally enforceable. This regulation also establishes procedures for the debtor who intends to present such information.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are classified as a "non-major" regulation under Executive Order 12291. These regulations have also been evaluated under the Department of Transportation's Regulatory Policies and Procedures: the regulation is not significant under those procedures. The anticipated economic impact relates to the collection of an additional $2,000,000 in debts that would otherwise be uncollectable.

These regulations are being promulgated as a final rule. Pursuant to the Administrative Procedure Act, a notice of proposed rulemaking (NPRM) was not published for this rulemaking. These regulations relate to agency procedures and under the Administrative Procedure Act, 5 U.S.C. 553b(B), an NPRM is not required. In addition, publishing an NPRM pursuant to the Administrative Procedure Act would have been impractical because timely action is needed to assure DOT participation in the IRS Federal Tax Refund Offset program for the 1989 tax year.

The Department does, however, solicit public comment on the provisions of this rule. A 60-day comment period is being provided. The Department will review the comments, amend the rule if appropriate, and publish a notice indicating the Department's responses to the comments.

Federalism Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 89

Administrative practice and procedure, claims.

In consideration of the foregoing, the Department hereby proposes to amend Part 89 of Title 49 of the Code of Federal Regulations by deleting § 89.33 and by adding a new Subpart C as set forth below.

PART 89—[AMENDED]

1. The authority for Part 89 is revised to read as follows:

Authority: Pub. L. 89-508, July 19, 1966, 80 Stat. 308 (31 U.S.C. 3701, 3711; Pub. L. 97-365 secs 3, 10, 11, 13(b), Oct. 25, 1982, 96 Stat. 1749, 1754, 1755, 1757 (31 U.S.C. 3701-3720A Pub. L. 98-167, Nov. 29, 1983, 97 Stat. 1104 (31 U.S.C. 3718); Pub. L. 98-369, June 27, 1984, 98 Stat. 1153 (31 U.S.C. 3720A); Pub. L. 99-578, Oct. 28, 1986, 100 Stat. 3305 (31 U.S.C. 3718).

§ 89.33 [Removed and Reserved]

2. Section 89.33 is removed and reserved.

3. Subpart C is added to read as follows:

Subpart C—Referral of Debts to IRS for Tax Refund Offset

Sec.
89.37 Applicability and scope.
89.39 Administrative charges.

Sec.
89.41 Notice requirement before offset.
89.43 Review within the Department.
89.45 Department determination.
89.47 Stay of offset.

Subpart C—Referral of Debts to IRS for Tax Refund Offset

§ 89.37 Applicability and scope.

(a) This subpart implements 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this subpart, a past-due legally enforceable debt referable to the IRS is:

(1) A debt which:

(i) Is owed to the United States;

(ii) Is at least $25.00;

(iii) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(iv) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(v) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Department against amounts payable to or on behalf of the debtor by or on behalf of the Department;

(vi) Has been disclosed by the Department to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00; and

(2) A debt for which the Department has:

(i) Notified or has made reasonable attempt to notify the taxpayer that the debt is past-due and, that the debt, unless repaid within 60 days thereafter, will be referred to the IRS for offset against any overpayment of tax;

(ii) Given the debtor at least 60 days from the date of notification to present information that all or part of the debt is not past-due or legally enforceable, has considered information presented by such debtor, and has determined that an amount of debt is past-due and legally enforceable;

§ 89.39 Administrative charges.

In accordance with 4 CFR 102.13, all administrative charges incurred in connection with the referral of the debt to the IRS shall be added to the debt and thus increase the amount of the offset.

§ 89.41 Notice requirement before offset.

A request for offset from an IRS tax refund will be made only after the Department has made a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. The Department's notice of intention to collect by IRS tax refund offset (Notice of Intent) includes:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of the Department's Notice of Intent, the Department will refer the debt to the IRS for offset against any amount due the debtor as a tax refund;

(c) That the debtor has a right to present information that all or part of the debt is not past-due or legally enforceable; and

(d) A mailing address for forwarding any written correspondence and a contact name and telephone number for any questions.

§ 89.43 Review within the Department.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent may present, for 60 days from the date of the Notice of Intent, information that all or part of the debt is not past-due or legally enforceable. (However, this does not extend the regulatory period for submitting written statements or for requesting an administrative hearing on the merits of an alleged violation, nor does it extend the period to appeal an assessed civil penalty.) To comply with this procedure, the debtor must:

(1) Send a written request for a review of the information to the address provided in the notice.

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or legally enforceable.

(3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60 day period.

(b) *Submission of information.* The debtor may submit information showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the information within the remainder of the 60 day period will be interpreted as there is no additional information for consideration.

(c) *Review of the information.* The Department considers all available information related to the issue of whether the debt is past-due and the issue of whether the debt is legally enforceable. After a decision has been reached, the Department notifies the debtor whether the Department has sustained amended, or cancelled its determination that the debt is past-due and legally enforceable.

§ 89.45 Department determination.

(a) Following review of the information, the Department notifies the debtor with a written decision that includes the supporting rationale.

(b) If the Department either sustains or amends its determination, it shall notify the debtor that the debt is being referred to the IRS for offset against the debtor's Federal income tax refund. If the Department determines that there is no legally enforceable debt or that full payment has been made, the case will be closed.

§ 89.47 Stay of offset.

If the debtor timely notifies the Department that he or she is complying with the procedures in § 89.43(a) of this subpart and timely submits additional information in accordance with § 89.43(b) of this subpart, the debt will not be referred to the IRS while the matter is under review by the Department. Referral will not be made until the issuance of a written decision, in accordance with § 89.45 of this subpart, which sustains or amends the Department's original determination.

Issued in Washington, DC on ths 29th day of June, 1989.

Jon H. Seymour,

Assistant Secretary for Administration, Department of Transportation.

[FR Doc. 89–15919 Filed 7–6–89; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132–9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) of "other rockfish" in the Central Regulatory Area of the Gulf of Alaska has been reached. The Secretary of Commerce (Secretary) is prohibiting directed fishing for and further retention of "other rockfish" by vessels fishing in this area from 12:00 noon, Alaska Daylight Time (ADT), on July 5, 1989, through December 31, 1989.

DATES: Effective from 12:00 noon, ADT, on July 5, until midnight, Alaska Standard Time, December 31, 1989. Public comments will be received through July 20, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

The 1989 TAC specified for "other rockfish" in the Central Regulatory Area is 8,452 mt (54 FR 6524, February 13, 1989). The Regional Director reports that vessels have landed 7,037 mt of "other rockfish" through June 17 in the Central Regulatory Area. At recent catch and effort rates, the entire TAC will be harvested by July 5.

Therefore, pursuant to § 672.20(c)(2)(i), the Secretary is prohibiting further fishing for and retention of "other rockfish" in the Central Regulatory Area effective 12:00 noon, ADT, July 5, 1989. Any "other rockfish" caught in the Central Regulatory Area after that date must be treated as prohibited species and discarded at sea. The category "other rockfish" is defined for the Central Regulatory Area as all fish of the genus Sebastes except pelagic shelf rockfish. See the **Federal Register** notice of 1989 initial specifications for the Gulf of Alaska groundfish fishery for a complete species list (54 FR 6524, February 13, 1989).

Overharvesting of "other rockfish" will result unless this notice takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice. Public comments on this notice of closure may be submitted to the Regional Director at the address above until July 20, 1989. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon as practicable after that reconsideration, will publish in the **Federal Register** a notice either of continued effectiveness of the adjustment, responding to comments received, or modifying or rescinding the adjustment.

Classification

This action is taken under §§ 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: June 30, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–15935 Filed 7–3–89; 9:20 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 129
Friday, July 7, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-066-88 and CO-005-89]

RIN 1545-AL62 and 1545-AN12

Consolidated Return and Distributions After the Sale of Stock of a Subsidiary

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to determining the basis and the earnings and profits of members of an affiliated group filing consolidated returns following certain changes in the structure of the group; and, relating to a dividend or other distribution subject to section 301 that is declared with respect to stock of a subsidiary member of an affiliated group filing consolidated Federal income tax returns if the stock of the subsidiary member is disposed of before the distribution is made, but after the selling member becomes entitled to the distribution.

DATES: The public hearing will begin at 10:00 a.m. on Monday, September 18, 1989. Outlines of oral comments must be delivered by Monday, August 28, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:CORP:T:R (CO-066-88) or (CO-005-89), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Cynthia Grigsby of the Regulations Unit, Assistant Chief Counsel (Corporate), Internal Revenue Service, Room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1502 of the Internal Revenue Code of 1986. The proposed regulations appeared in the **Federal Register** for September 8, 1988, (53 FR 34779) and March 16, 1989, (54 FR 11007), respectively.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit no later than Monday, August 28, 1989, an outline of oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-15906 Filed 7-6-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AD30

Loan Guaranty; Processing Assumptions of VA Guranteed Home Loans

AGENCY: Department of Veterans Affairs.

ACTION: Correction and extension of comment period; proposed regulations.

SUMMARY: On June 15, 1989, commencing on page 25469, (54 FR 25469), the Department of Veterans Affairs (VA) published a proposed rule to amend its regulations for processing assumptions of VA guaranteed home loans. Under the proposed rule, as published, §§ 36.4209(h)(1)(ii)(D) and 36.4303(k)(1)(ii)(D) were incorrect. Those sections should state that VA loan holders are required to refund $50 of any fee collected for processing an assumption of a VA loan if the assumption is not underwritten by the loan holder or its authorized agent pursuant to VA automatic authority. An additional $50 must be refunded if the VA does not approve the assumption.

At this time, VA is publishing the correct version and is opening a new comment period for those two sections only. In addition, VA is correcting § 36.4209(h)(1)(i)(B) to correct a typographical error.

VA regrets the errors; this notice hereby corrects the errors and the correct regulations are published below.

DATES: Comments on §§ 36.4209(h)(1)(ii)(D) and on 36.4304(k)(1)(ii)(D) must be received on or before August 7, 1989. Comments will be available for public inspection until August 16, 1989.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, (202) 233-6376.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs-housing and community developments, Manufactured homes, Veterans.

Dated: June 30, 1989.

Charles A. Fountaine III,

Chief, Directives Management Division.

38 CFR Part 36, Loan Guaranty, is proposed to be amended as follows:

In § 36.4209, paragraphs (h)(1)(i)(B) and (h)(1)(ii)(D) are revised to read as follows:

§ 36.4209 Reporting requirements.

* * * * *

(h) * * *

(1) * * *

(i) * * *

(B) If the application for assumption is disapproved, the holder shall notify the seller and the purchaser that the decision may be appealed to the Department of Veterans Affairs office of jurisdiction within 30 days. The holder shall make available to the Department of Veterans Affairs office copies of all items used by the holder in making the holder's decision in case the decision is appealed to the Department of Veterans Affairs, if the application remains disapproved after 60 days (to allow time for appeal to and review by the Department of Veterans Affairs) then the holder must refund $50 of any fee previously collected under the provisions of § 36.4275(a)(3)(iii) of this section.

* * * * *

(ii) * * *

(D) The notice and documents required by this section must be submitted to the Department of Veterans Affairs no later than 35 days after the date of receipt by the holder of an application for approval of an assumption, subject to the same extensions as provided in paragraph (h)(1)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent, pursuant to the automatic authority provisions, $50 of any fee collected in accordance with § 36.4275(a)(3)(iii) of this section must be refunded. If the Department of Veterans Affairs does not approve the assumption, the holder will be notified and an additional $50 of any fee collected under § 36.4275(a)(3)(iii) of this section must be refunded following the expiration of the 30-day appeal period set out in paragraph (h)(1)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs by an individual who was not involved in the original disapproval action.

* * * * *

2. In § 36.4303, paragraph (k)(1)(ii)(D) is revised to read as follows:

§ 36.4303 Reporting requirements.

* * * * *

(k) * * *

(1) * * *

(ii) * * *

(D) The notice and documents required by this section must be submitted to the Department of Veterans Affairs no later than 35 days after the date of receipt by the holder of an application for approval of an assumption, subject to the same extensions as provided in paragraph (k)(1)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent, pursuant to the automatic authority provisions, $50 of any fee collected in accordance with § 36.4312(d)(8) of this section must be refunded. If the Department of Veterans Affairs does not approve the assumption, the holder will be notified and an additional $50 of any fee collected under § 36.4312(d)(8) of this section must be refunded following the expiration of the 30-day appeal period set out in paragraph (k)(1)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs by an individual who was not involved in the original disapproval action.

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[FR Doc. 89-15929 Filed 7-6-89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3612-2]

Approval and Promulgation of Air Quality Implementation Plans; Maine; NSR/PSD Revisions, and Related Revisions for Stack Heights, Visibility, and PM_{10}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maine. These revisions were made to satisfy the current federal new source review (NSR) requirements for the preconstruction permitting of new sources and modifications in both attainment and nonattainment areas. In addition, EPA is proposing to approve revisions that were included in the State's submittal which incorporate stack height and dispersion techniques regulations, visibility protection provisions for mandatory federal class I areas and associated integral vistas, and the national ambient air quality standards (NAAQS) for particulate matter (PM_{10}). The intended effect of this action is to propose approval of the State's request to amend its SIP to incorporate these current federal requirements. This action is being taken under section 110 of the Clean Air Act (the Act).

DATES: Comments must be received on or before August 7, 1989.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Bldg., Boston, MA 02203. Copies of Maine's submittal and EPA's Technical Support Documents prepared for this revision are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203; and the Department of Environmental Protection, Bureau of Air Quality Control, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: For new source review contact Lynne Hamjian, (617) 565-3246; FTS 835-3246 and for stack heights, visibility and PM_{10} contact Susan Kulstad, (617) 565-3225; FTS 835-3225.

SUPPLEMENTARY INFORMATION: On August 22, 1988, the Maine Department of Environmental Protection (DEP) submitted revisions to its State Implementation Plan (SIP). This notice discusses the proposed revisions and EPA's rationale for proposing to approve them. The notice is divided into four separate sections for clarify. Section I discusses the revisions to Maine's new source review (NSR) regulations including the State's regulations for the prevention of significant deterioration (PSD). Section II discusses the revisions to Maine's stack height regulations. Section III discusses Maine's visibility protection requirements for class I areas. Section IV discusses revisions to Maine's regulations which incorporate certain requirements for PM_{10}.

I. New Source Review Revisions

A. Background

In 1979, the Maine DEP adopted NSR regulations (including those for PSD) to satisfy the requirements for SIPs codified at 40 CFR Part 51. EPA approved these regulations and incorporated them into the SIP on January 30, 1980 and February 19, 1980. On August 7, 1980 EPA promulgated major revisions to 40 CFR Part 51's NSR/PSD requirements for SIPs pursuant to a court decision. (*Alabama Power Company et al.*, v. *Costle*, D.C. Cir. No. 78-1006 December 14, 1979.) In addition, on October 14, 1981, EPA

promulgated a change in the definition of the term "stationary source" in the Part 51 regulations for nonattainment areas. The Maine DEP has adopted revisions to its SIP's NSR/PSD regulations to be consistent with the current NSR/PSD requirements codified at 40 CFR 51.160 through 51.166.

B. Summary of Maine's Submittal

On August 22, 1988, the Maine DEP submitted these amended regulations to EPA as revisions to its SIP. The revisions include changes to Chapter 100, "Definitions," Chapter 110, "Ambient Air Quality Standards," Chapter 113, "Growth Offset Regulations," Chapter 114, "Classification of Air Quality Control Regions," Chapter 115 (formerly Chapter 108), "Emission License Regulations," and portions of Chapter 1, "Regulations for the Processing of Applications."

These revisions also include a letter from the Maine DEP that certifies that the Maine DEP is implementing the "Top Down" approach in determining Best Available Control Technology (BACT) in accordance with EPA's December 1987 memorandum from Craig Potter entitled, "Improving New Source Review Implementation" and in accordance with the BACT document issued by the Northeast States for Coordinated Air Use Management (NESCAUM) dated October, 1988. In addition, the Maine DEP committed to using the "Top Down" approach in all future BACT determinations.

EPA has evaluated these proposed revisions and found that they are equivalent to, or in some instances, more stringent than, the requirements in 40 CFR 51.160 through 51.166.

Maine's regulations for NSR/PSD, and EPA's evaluation are detailed in a memorandum dated March 10, 1988 entitled, "Technical Support Document—Maine New Source Review Revisions." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

C. Amendments to Maine's NSR/PSD Regulations Necessary for Final Approval

Chapter 100 of Maine's regulations define "major source" as any source which emits or has the potential to emit any regulated pollutant greater than the significance levels found at 40 CFR 51.166(b)(23)(i). In general this means that Maine's definition is more stringent than the definition of "major stationary source" in 40 CFR 51.165 and 51.166. However, Maine's definition is not as stringent for new stationary sources in all cases. Maine's definition of "major source" does not include the portion of the federal definition which states that a major stationary source is also any physical change at a stationary source, not otherwise qualifying under the definition of major stationary source, if the change would constitute a major stationary source by itself. Therefore, prior to final rulemaking, Maine must include the provisions of 40 CFR 51.165(a)(1)(iv)(A)(2) and 40 CFR 51.166(b)(1)(i)(c) in its definition of "major source."

Chapter 100 of Maine's regulations does not include a definition of the term, "Begin Actual Construction." Prior to final rulemaking, Maine must include the definition of this term found at 40 CFR 51.166(b)(11).

Maine submitted portions of Chapter 1 of its regulations for incorporation into the SIP. However, the version of Chapter 1 submitted by the Maine DEP for approval and incorporation into the SIP is numbered and formatted differently from the version of Chapter 1 adopted and effective on the State level. The numbering and format of the version of Chapter 1 submitted to EPA should match the numbering of current State version of the regulation. Prior to final rulemaking, the Maine DEP must resubmit Chapter 1 in its State-adopted form with the appropriate numbers and references.

D. Today's Action

Proposed Action

EPA is proposing to approve Maine's request to revise the following SIP regulations: Chapter 100, "Definitions," Chapter 110, "Ambient Air Quality Standards," Chapter 113, "Growth Offset Regulations," Chapter 114, "Classification of Air Quality Control Regions," Chapter 115 (formerly Chapter 108), "Emission License Regulations," and Chapter 1, "Regulations for the Processing of Applications." These revisions incorporte the current federal new source review and prevention of significant deterioration requirements of 40 CFR 51.160 through 51.166. EPA is proposing approval with the understanding that the Maine DEP will revise the regulations as outlined in this notice prior to final EPA approval of these revisions.

II. Stack Height Revisions

A. Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Act. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 710 F.2d 436 (D.C. Cir. 1983). On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition, 104 S.Ct. 3571 (1984), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985. Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892).

The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2)(B) of the Act, all states were required to (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credits and dispersion techniques in accordance with the revised regulations; and (2) review all existing emission limitations to determine whether any of these limitations have been effected by stack height credits above GEP or any other dispersion techniques. For any limitations so effected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA, as required by section 406. Subsequently, EPA issued detailed guidance on the performance of the required reviews.

On January 22, 1988, the U.S. Court of Appeals issued a decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988), regarding EPA's revised July 8, 1985 stack height regulations. Subsequent petitions for reheaing were denied. The Court remanded three provisions to EPA that may potentially bear on state actions now being taken pursuant to EPA's July 8, 1985 regulations. However, since EPA is currently in the process of reconsidering the remanded provisions and the outcome is as yet unknown, our review of Maine's August 22, 1988 submittal addresses its consistency with the July 8, 1985 regulations only. If EPA

further revises its regulations in response to the remand at some future date, Maine will, at that time, be required to revise its regulations accordingly. Sources may have to have their permits amended and/or be required to submit new demonstrations that applicable ambient standards are met if affected by such revisions.

B. Summary of Maine's Submittal

Maine's August 22, 1988 SIP submittal includes revised regulations at Chapter 116 which limit stack height credits and dispersion techniques in accordance with the current requirements of 40 CFR 51.100 and 51.118. Additionally, Maine's revisions to Chapter 116 define the term "ambient air." A separate SIP revision submittal, received by EPA on September 30, 1988, contains the Maine DEP's review of all existing emission limitations. EPA has approved that SIP revision in a separate rulemaking notice published in the Federal Register on February 27, 1989 (54 FR 8190).

Chapter 116 of Maine's Air Regulations, "Prohibited Dispersion Techniques," specifies the stack height and dispersion techniques requirements for the permitting of air emission sources within the State of Maine. Additionally, Chapter 116 sets forth the locations where applicants must demonstrate that ambient air quality standards will be met (i.e., locations which constitute "ambient air").

With one significant exception, Maine's stack height and dispersion techniques regulations at Chapter 116(II)(A) through (E) adequately parallel and are as stringent as those of 40 CFR 51.100 as amended on July 8, 1985. Maine has adopted the language from 40 CFR Part 51's stack height regulations virtually verbatim except in one case.

The one significant exception appears at Chapter 116(II)(E)(2) in the definition of "excessive concentration." For sources seeking credit for increases in existing stack height up to formula height after October 11, 1983, Maine correctly sets forth the requirement that a maximum ground-level concentration be individually "* * * at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects * * *." However, Maine's regulation omits the essential provisions from 40 CFR 51.100(kk)(2) that refer to pertinent language at (kk)(1), "* * * *and* which contributes to a total concentration due to emissions from all sources that is greater than an ambient air standard * * * [or] a prevention of significant deterioration increment." (Emphasis added.) By this omission, Maine has failed to adopt a provision as stringent as 40 CFR 51.100(kk)(2). However, the Maine DEP has agreed to revise its requirement for consistency with 40 CFR 51.100(kk)(2), and to submit the revised version of Chapter 116(II)(E)(2) before EPA takes final rulemaking action on these revisions.

Maine's requirement at Chapter 116(I) is at least as stringent as the definition of "ambient air" at 40 CFR 50.1(e). Maine's regulation further and more specifically limits inaccessible plant property to only the "production area," where "the source regularly conducts activities necessary to the production of goods or services * * * which is of a size not larger than reasonably necessary to conduct such activities * * *"

EPA's evaluation of Maine's stack height and dispersion techniques requirements is detailed in a memorandum entitled, "Technical Support Document—Chapter 116 of Maine DEP's Regulations," dated December 19, 1988. Copies of this document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

C. Amendments to Maine's Stack Height Regulations Necessary for Final Approval

As previously stated, Maine's requirements for stack heights and dispersion techniques at Chapter 116(II) adequately meet the applicable requirements of 40 CFR 51.100 except for 51.100(kk)(2). The Maine DEP has agreed to adequately revise and submit Chapter 116(II)(E)(2) to include the requirements of 40 CFR 51.100(kk)(2) before EPA takes final rulemaking action on these revisions.

D. Today's Action

Proposed Action

EPA proposes to approve and incorporate by reference revisions to SIP regulation Chapter 116, "Prohibited Dispersion Techniques," for the permitting of air emission sources. These revisions incorporate the current provisions of 40 CFR 50.1(e), 51.100, and 51.118, which specify ambient air, stack height and dispersion techniques requirements for SIPs. EPA proposes approval with the understanding that the Maine DEP will revise and submit Chapter 116(II)(E)(2) concerning credit for raising the height of existing stacks as outlined in this notice prior to final EPA approval of these revisions.

III. Visibility Revisions

A. Background

Congress set a national goal of preventing any future, and remedying any existing, impairment of visibility resulting from manmade air pollution in mandatory class I federal areas in Section 169A of the Act. On December 2, 1980, EPA promulgated Phase I visibility regulations, 40 CFR 51.300 through 51.307, to address "plume blight" impairment—that impairment which can be traced to a single existing stationary facility or small group of existing stationary facilities by simple monitoring techniques.

Part 51 regulations require that SIPs address the following:

1. Coordination with the class I area Federal Land Manager,
2. Review of proposed new sources for their impact on visibility in class I areas and integral vistas,
3. A monitoring strategy for evaluating visibility in class I areas,
4. Best available retrofit technology (BART) analyses for existing facilities identified as reasonably anticipated to cause or contribute to visibility impariment in class I areas, and
5. A long-term strategy (10–15 years) for making reasonable progress toward the national visibility goal.

On July 12, 1985, EPA promulgated a visibility Federal Implementation Plan (FIP) covering the monitoring and new source review provisions for Maine and a number of other states. The FIP was promulgated pursuant to Part 1 of a settlement agreement reached in response to a citizen's suit filed in the U.S. District Court for the Northern District of California by the Environmental Defense Fund (EDF) and other environmental groups, *EDF* v. *Gorsuch*, Number C82–6850 RPA (Dec., 1982).

On November 24, 1987 pursuant to Part 2 of the settlement agreement, EPA promulgated a visibility FIP covering the long-term strategy provisions and revising the new source review FIP to include integral vista provisions. However, the FIP promulgated on November 24, 1987, defers action on BART control strategies at existing sources.

B. Summary of Maine's Submittal

Maine's August 22, 1988 SIP revision submittal includes many of the requirements covered under EPA's visibility protection regulations at 40 CFR 51.300 through 51.307, and therefore, those included in EPA's Part 1 visibility FIP. A summary of the visibility-related revisions in Maine's

August 22, 1988 submittal is provided below.

Purpose and Applicability (40 CFR 51.300). Maine's Chapter 114, "Classification of Air Quality Control Regions," correctly lists the mandatory class I areas in section (I)(C), both within Maine and within New Hampshire where there is any Maine source "* * * the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in such area" (40 CFR 51.300(b)(ii)). These class I areas are the following: Acadia National Park, Moosehorn National Wildlife Refuge, and Roosevelt Campobello International Park in Maine, and the Presidential Range Dry River Wilderness and Great Gulf Wilderness of the White Mountain National Forest in New Hampshire. Maine's Chapter 115(VII)(D)(5)(b) specifies the required inclusion in the class I area of any "conservation easements under the jurisdiction of an appropriate Federal Land Manager as of August 7, 1977," which agrees with EPA's understanding of the Federal Land Manager's original intent for the class I area designation of Acadia National Park.

Definitions. (40 CFR 51.301). The definitions contained in Maine's Air Regulations at Chapter 100 are adequate to satisfy the definitions at 40 CFR 51.301. In two instances the Maine DEP's definitions are more broadly applicable than the definitions in 40 CFR Part 51:

(a) With regard to visibility protection for integral vistas, the Maine DEP definition of "adverse impace on visibility" at Chapter 100(2) specifically includes effects on integral vistas whereas the definition at 40 CFR 51.301(a) specifically does not; and

(b) In choosing not to define "existing stationary facility" the Maine DEP rules more widely require BART applicability, because the definition at 40 CFR 51.301(e) grandfathers sources in existence before August 7, 1962 from BART requirements and limits applicability to 26 source categories having the potential to emit greater than 250 tons per year of any visibility impairing pollutant.

Implementation control strategies (40 CFR 51.302). The Maine DEP's submittal adequately meets certain requirements of 40 CFR 51.302, but does not include others.

The Maine DEP invited each affected Federal Land Manager to attend the public workshops and hearings held during the State's adoption of its visibility regulations as required by 40 CFR 51.302(a). At Chapter 114(I)(C), the Maine DEP lists all federally and state declared integral vistas as required by 40 CFR 51.302(b)(1)(i). At Chapter 115(VI)(A)(3), the Maine DEP sets forth BART requirements for existing sources within 5 years of a determination by the Maine Board of Environmental Protection that emissions from such a source are reasonably attributable to visibility impairment certified by the Federal Land Manager of any class I area or integral vista. In combination with the definitions in Chapter 100 of Maine's regulations, this requirement fulfills 40 CFR 51.302(c)(4)(iv).

For those requirements of 40 CFR 51.302 that were not included in Maine's August 22, 1988 submittal, the FIP covering those provisions shall remain in effect. (Further discussion of these provisions is provided in III.D. of this notice.)

Integral vistas (40 CFR 51.304). The Maine DEP adequately identifies federally declared integral vistas from Roosevelt Campobello International Park (with one minor exception noted below) at Chapter 114(I)(C) as required by 40 CFR 51.304.

Additionally, Maine's Chapter 114(I)(C) specifies state declared integral vistas, as viewed from Cadillac Summit and Sunset Point at Acadia National Park, which are subject to the same requirements as federally declared ones. In declaring additional integral vistas, the Maine DEP consulted with the Federal Land Manager.

The Maine DEP, in identifying "key features" observed from Con Robinson's Point at Roosevelt Campobello International Park, inadvertently and erroneously indicated "portions viewed from Liberty Point" for Herring Cove. The Maine DEP has agreed to correct this error in its list at Chapter 114(I)(C), and to resubmit the revised list to EPA before final rulemaking action is taken on these revisions.

Visibility monitoring (40 CFR 51.305). The Maine DEP regulations adequately meet EPA's current monitoring requirements for visibility. EPA currently participates in the operation of a national visibility monitoring network, "IMPROVE", and has not as yet developed a reference method for visibility monitoring. IMPROVE instruments are currently operating at Acadia National Park and Moosehorn Wildlife Refuge. At Chapter 115, the Maine DEP includes requirements allowing it to require visibility monitoring for the following:

1. Existing sources located in or near a class I area where available air quality is limited, or other extenuating circumstances exist (Chapter 115(VIII)(B)(3));

2. Minor new sources or modifications as determined on a case-by-case basis considering their location including proximity to class I areas, integral vistas (Chapter 115(VII)(C)(3)); and

3. Major new sources and modifications, where pre-construction (Chapter 115(VII)(D)(5)(e)) and post-construction (Chapter 115(VII)(D)(6)) visibility monitoring may be required as the Maine DEP determines is necessary. (This satisfies the requirements of 40 CFR 51.307(d).)

New source review (40 CFR 51.307). The Maine DEP's Air Regulations at Chapter 115(VII) adequately meet the new source review requirements at 40 CFR 51.307, with one exception which is discussed below.

The Maine DEP's submittal requires that Federal Land Managers receive written notification of any proposed new major stationary source or modification, including an analysis of the anticipated visibility impacts on any federal class I area or integral vista prior to the Maine DEP's acceptance of the application and at least 60 days prior to any public hearing. The Maine plan also specifies the circumstances under which such a proposed source must conduct a visibility analysis and lists the appropriate Federal Land Manager contacts, thereby fulfilling the requirements of 40 CFR 51.307(a)(1).

At chapter 115(VII)(D)(5)(d), the Maine plan requires the Maine DEP to consider the analysis and comment of any affected Federal Land Manager received during the public comment period; specifies the procedures the Maine DEP will follow when it does not concur with a Federal Land Manager's determination that adverse impacts will result (which include the appropriate public notice and a mandatory public hearing); and provides that an emission license shall be denied where the Maine DEP concurs with a Federal Land Manager finding of adverse impairment. Therefore, Maine's regulations satisfy the requirments of 40 CFR 51.307(a)(3).

All of the requirements of Maine's visibility plan for new source review apply to federally and state declared integral vistas as well as to mandatory class I areas. The Maine visibility regulations also apply to new major stationary sources and major modifications locating in nonattainment areas when those sources may impact a class I area. Therefore, Maine's plan satisfies 40 CFR 51.307 (b) and (c).

For the provision of 40 CFR 51.307(a)(2) regarding advanced notification to any affected Federal Land Manager that was not included in Maine's submittal, the FIP covering that provision shall remain in effect. (See III.D. of this notice).

EPA's detailed evaluation of the Maine DEP's revisions pertaining to visibility protection is contained in a memorandum, "Technical Support Document—Maine's Class I Visibility Protection Regulations," dated December 19, 1988. Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

C. Amendments to Maine's Visibility Regulations Necessary for Final Approval

As described above, Maine's identification of integral vistas at Chapter 114(I)(C) contains an error in identifying a "key feature" observed from Roosevelt Campobello International Park. Prior to final rulemaking on its August 22, 1988 submittal, Maine must correct this error and submit the revised list in Chapter 114(I)(C).

D. Today's Actions

Proposed Action

EPA proposes to approve the visibility-related definitions in the Maine DEP's Air Regulations at Chapter 100; the listing of federally mandated class I areas and federally and state declared integral vistas at Chapter 114(I)(C) with the understanding that Maine will revise that Chapter as explained in this notice at III.C., above; the general BART requirements for existing sources at Chapter 115(VI)(A)(3); and the visibility-related existing and new source review provisions contained in Chapter 115(VII).

While Maine's August 22, 1988 submittal addresses many of the requirements for FIPs covered by 40 CFR Part 51's visibility regulations, it should be clearly noted that other provisions of those regulations still require action on Maine's part to supersede all of the FIP. Therefore, relevant portions of the FIP will remain in effect in Maine until such time as Maine submits additional SIP revisions to address:

(1) A long-term strategy for remedying existing impairment as required at 40 CFR 51.306;

(2) The identification and application of BART and other measures to applicable existing sources as required at 40 CFR 51.302 (b) and (c)(2), (3) and (4); and

(3) Explicit provisions of advanced notification to any affected Federal Land Manager as required at 40 CFR 51.307(a)(2).

EPA shall take separate rulemaking actions on those additional SIP revisions at such time as they are submitted by the Maine DEP for approval.

Proposed Action

As Maine has essentially met the requirements concerning visibility protection monitoring and new source review of 40 CFR 51.305 and 51.307, which are addressed in the FIP requirements at 40 CFR 52.26 and 52.27, EPA proposes to revise those FIP provisions incorporated into Maine's SIP at 40 CFR 52.1032 by deleting the current subsections and inserting the following text: "The requirements of section 169A of the Act are not met because the plan does not include approvable procedures for meeting all of the requirements of 40 CFR 51.302, 51.306, or the requirements of 51.307(a)(2) for protection of visibility in mandatory class I Federal areas."

IV. PM_{10} Revisions

A. Background

On July 1, 1987, EPA promulgated a revised national ambient air quality standard (NAAQS) for particulate matter (52 FR 2463). EPA revised the old definition of the NAAQS from Total Suspended Particulate (TSP) to a new definition. The new definition applies to particulate matter with aerodynamic diameters of 10 micrometers or less.

B. Summary of Maine's Submittal

On August 22, 1988, the Maine DEP submitted amended regulations to EPA as revisions to its SIP. These revisions incorporate NSR-related PM_{10} requirements which include changes to the following regulations: Chapter 100, "Definitions," Chapter 110, "Ambient Air Quality Standards," and Chapter 115, "Emissions License Requirements." These amendments include the relevant definitions, the PM_{10} standard, the PSD provisions. These amendments do not include the definitions of the terms "particulate matter emissions" and "PM_{10} emissions," nor do they include provisions related to significant harm levels and emergency episode plans for PM_{10}. Future action by the State of Maine is required to address these definitions and provisions.

Maine's NSR-related PM_{10} regulations and EPA's evaluation are detailed in a memorandum dated January 5, 1989, entitled, "Technical Support Document-Maine's Particulate Matter Regulations." Copies of that memorandum are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

C. Amendments to Maine's NSR-Related PM_{10} Requirements Necessary for Final Approval

Forty CFR 51.165(b) requires that States develop a preconstruction permitting program for sources which locate in attainment areas and "cause or contribute to a violation of a NAAQS." Chapter 100 of Maine's regulations correctly includes the PM_{10} significant impact concentrations which define the term "cause or contribute to a violation of a NAAQS." However, Chapter 115 of Maine's regulations does not state how these significant impact concentrations are to be applied in regulating new and modified sources of PM_{10}. As submitted, Maine's regulations require that sources which emit a nonattainment pollutant and which locate in or significantly impact a nonattainment area must comply with all of the nonattainment area new source review provisions (i.e. lowest achievable emission rate, offsets, etc.). However, EPA determined that section 110 of the Act and not Part D, governs the implementation of the PM_{10} standards. Therefore, there are no PM_{10} nonattainment areas within the meaning of section 107 of the Act. Therefore, Maine's regulations for sources which emit a "nonattainment pollutant" would not apply to new and modified sources of PM_{10}. No other provision contained in Maine's August 22, 1988 submittal specifies how new or modified sources that would cause or contribute to a violation of the PM_{10} NAAQS are to be regulated. Therefore, Maine has agreed to adopt the necessary language to insure that the requirements of 40 CFR 51.165(b) are met for PM_{10} prior to final rulemaking approving these revisions.

D. Today's Action

Proposed Action

EPA is proposing to approve Maine's PM_{10} related revisions to the following SIP regulations: Chapter 100, Definitions," Chapter 110, "Ambient Air Quality Standards," Chapter 114, "Classification of Air Quality Control Regions," and Chapter 115, "Emission Licensing Regulations." These revisions incorporate federal PM_{10} requirements for new source review. EPA is proposing approval with the understanding that the Maine DEP will revise the regulation as outlined in this notice prior to final rulemaking approving these revisions.

In adopting the Act, Congress designated EPA as the agency primarily responsible for interpreting the statutory provisions and overseeing their implementation by the states. EPA must approve state programs that meet the requirements of 40 CFR Part 51.

Conversely, EPA cannot approve programs that do not meet those requirements. However, the requirements of the Act and 40 CFR Part 51 for NSR including those for PSD, stack heights/dispersion techniques, and visibility are by nature very complex and dynamic. It would be administratively impracticable to include all statutory interpretations in the EPA regulations and the SIPs of the various states, or to amend the regulations and SIPS every time EPA interprets the statute or regulations or issues guidance regarding the proper implementation of the NSR program. Moreover, the Act does not require EPA to do so. Rather, action by EPA to approve these NSR-related regulations and narrative as part of the Maine SIP still have the effect of requiring the state to follow EPA's current and future interpretations of the Act's provisions and regulations, as well as EPA's operating policies and guidance (but only to the extent that such policies are intended to guide the implementation of approved state NSR programs). Similarly, EPA approval also will have the effect of superceding and interpretations or policies that the state might otherwise follow to the extent they are at variance with EPA's interpretations and applicable policies. Of course, any fundamental changes in the administration of NSR would have to be accomplished through amendments to the regulations in 40 CFR Part 51 and subsequent SIP revisions.

Upon approval of these revisions to the NSR requirements of the Maine SIP, EPA will continue to oversee implementation of this important program by reviewing and commenting upon proposed permits as appropriate. Specifically, EPA will comment upon proposed permits that do not implement the letter of the law, as well as EPA's statutory and regulatory interpretations and applicable guidance. If a final permit is issued which still does not reflect consideration of the relevant factors, EPA may deem the permit inadequate for purposes of implementing the requirements of the Act and Maine's SIP, and may consider enforcement action under section 113 and 167 of the Act to address the permit deficiency.

EPA is proposing to approve revisions to the Maine SIP, which were submitted on August 22,1988, and is soliciting public comments on issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal Rulemaking procedure by submitting written comments to the Region I office listed in the ADDRESSES section of this notice.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Paul G. Keough,

Acting Regional Administrator, Region I.

Date: March 28, 1989.

[FR Doc. 89–15907 Filed 7–6–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3612–4]

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Michigan State Implementation Plan: Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking, published May 10, 1989, (54 FR 20153) has been extended an additional 30 days from date of publication. This notice proposed to disapprove a revision to the Michigan State Implementation Plan, which concerns a Consent Order for volatile organic compound emissions from James River-KVP. This source is located in Kalamazoo County, Michigan. USEPA is taking this action based on an extension request by a commentor.

DATE: Comments are now due on or before July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886–6069.

Date: June 22, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–15908 Filed 7–6–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3612–3]

Approval and Promulgation of Implementation Plans; Ohio State Implementation Plan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published May 30, 1989, (54 FR 22915), has been extended an additional 30 days. This notice proposed to approve and disapprove specific portions of the Ohio Environmental Protection Agency submittal as a revision to the Ohio State Implementation Plan. This includes new volatile organic compound (VOC) regulations for additional VOC source categories. The notic discusses the results of USEPA's review of the State's amendments to the VOC control portion of its SIP as well as solicits public comments on the revisions and USEPA's proposed action. USEPA is taking this action based on an extension request by a commentor.

DATE: Comments are now due on or before July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6069.

Date: June 27, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89–15909 Filed 7–6–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[General Docket 89-116; FCC 89-154]

RIN 3060-AD68

FCC Procedure for Measurement of Intentional Radiators (Except for Periodic and Spread Spectrum Devices and Devices Operating Below 30 MHz)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to establish a new procedure for measuring the electromagnetic emissions of intentional radiators operating under Part 15 of its rules. This new procedure is necessary due to the expanded authorization for operation of intentional radiators and changes in technical standards and measurement requirements for such devices that were adopted in the Commission's recent comprehensive revision of the Part 15 rules in GEN. Docket 87-389. In order to make the test procedure more readily available and to clarify that it has the force of rules, the Commission intends to include the test procedure in its rules.

DATES: Comments are due to be filed August 17, 1989 and reply comments are due to be September 1, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard Fabina, telephone (301) 725-1585.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in GEN. Docket 89-116, adopted May 12, 1989, and released June 29, 1989. The full text of the Commission proposal, including the proposed test procedure, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street NW., Washington, DC. The complete text of this proposal, including the proposed test procedure, may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037.

The following collection of information contained in this proposed rule making has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. A copy of any comments made should also be sent to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554. For further information contact Jerry Cowden, Federal Communications Commission. (202) 632-7513.

OMB Number: None.

Title: 47 CFR 15.31 (a)—Reporting and Recordkeeping Requirements for Radio Frequency Device Test Procedures (TP-3).

Action: New Collection.

Respondents: Businesses (including small businesses).

Frequency of Response: Recordkeeping and on occasion reporting.

Estimated Annual Burden: 350 responses, 5,250 total hours; 15 hours each.

Needs and Uses: Data gathered using these test procedures, and reported to the Commission or retained by the appropriate party, will be used by the Commission to determine compliance of the proposed equipment with the Commission's Rules.

Summary of the Notice of Proposed Rule Making

1. By this action, the Commission proposes to establish a new procedure for measuring electromagnetic emissions from intentional radiators operating under Part 15 of the Commission's Rules. This new procedure, "FCC Procedure for Measurement of Intentional Radiators (Except for Periodic and Spread Spectrum Devices and Devices Operating below 30 MHz), FCC/OET TP-3" (TP-3), is intended to set forth uniform methods for testing such devices for compliance with the technical standards adopted in the Commission's recent comprehensive revision of Part 15.

2. In Docket No. 87-389, the Commission revised a number of the technical standards that apply to intentional radiators, including the limits on permissible electromagnetic emissions (EME), the permissible bandwidth occupied, and the permissible operating frequency and frequency deviation. The Commission also specified certain requirements for measuring emissions from such devices for the purpose of determining compliance with the rules. For example, the rules were revised to specify the use of instrumentation with peak, average and quasi-peak detector functions, extend the range of frequencies to be measured for EME to include frequencies above 1000 MHz, standardize the range of the scan height of the measuring receiver antenna at 1 to 4 meters and establish the measurement distance for most intentional radiators at a uniform 3 meters.

3. The proposed TP-3 specifies the test environment, test instrumentation, configuration of the equipment under test and instructions for setting up and performing measurements to be used in evaluating intentional radiators for compliance with the Part 15 technical standards. Instructions are provided for measuring: (1) Line conducted EME; (2) radiated EME; (3) operating frequency; (4) operating frequency stability with variation in ambient temperature; (5) operating frequency with variation in primary supply voltage; (6) occupied bandwidth; and (7) input power. The proposed TP-3 also provides instructions for recording/reporting test results.

4. Comments are requested on the degree to which the proposed measurement procedure would provide an effective means of evaluating intentional radiators for compliance with the rules. Comments are also sought on the burden, in terms of both direct costs and time to complete tests, this procedure would impose on those who evaluate intentional radiators. The Commission invites suggestions for minimizing this burden in a manner that would not compromise the quality and consistency of the test measurements. In addition, comments are requested on whether the format of the test procedure is clear and whether the level of guidance furnished in the procedure is sufficient to permit the procedures to readily perform. Interested parties are requested to suggest changes which would improve the accuracy and repeatability of the test results when measurements are performed at different facilities.

5. In order to make the proposed test procedures more readily available and to clarify that they have the force of rules of Commission intends to include the test procedures in its rules. The Commission welcomes comments on all aspects of the proposed test procedures, and any other issues that may bear on the effectiveness of these procedures for safeguarding the radio frequency environment with the minimum burden on equipment suppliers. However, it does not intend to consider comments that deal with issues that were previously decided or are being

addressed in related proceedings. In particular, it will not consider comments proposing changes in the technical standards for intentional radiators.

Procedural Matters

6. Under the procedures set out in § 1.415 of the Commission's Rules, interested persons may file comments on or before [Date], 1989, and reply comments on or before [Date], 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided such information or writing indicating the nature and source of such information is placed in the public file and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

7. In accordance with the provisions of § 1.419 of the Commission's Rules, formal participants shall file an original and five (5) copies of their comments and other materials. Participants wishing each Commissioner to have a copy of their comments should file an original and 11 copies. Members of the public who wish to express their comments are given the same consideration regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours at the Commission's Public Reference Room at its headquarters in Washington, DC.

8. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte contacts.*

Initial Regulatory Flexibility Analysis

9. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's initial analysis is as follows:

I. *Need and purpose of this action.* The purpose of this proposed procedure is to set forth uniform methods for testing intentional radiators for compliance with the recent comprehensive revision of Part 15 of the Commission's Rules adopted in the *Report and Order* in Gen. Docket No. 87–389. Since the existing measurement procedures used to evaluate these devices are not satsifactory for evaluating devices under the revised rules, it is necessary to develop a new measurement procedure.

II. *The objectives.* Our objectives in proposing this new measurement procedure for intentional radiators is to provide the basis for a consistent and repeatable test program for evaluating these devices for compliance with the newly revised rules.

III. *Legal Basis.* The actions proposed herein are taken pursuant to the authority contained in sections 4(i), 301, 302, 303, 304, and 307 of the Communications Act of 1934, as amended.

IV. *Description of potential impact and number of small entities affected.* It is believed that the test procedure will benefit manufactures and test laboratories by speeding testing and reducing compliance costs. The proposed test procedure would modify the present procedures for measuring intentional radiators. Its adoption potentially would affect all manufacturers of intentional radiators and laboratories performing equipment authorization tests on such devices. However, the exact number of small entities affected is not known.

V. *Recording, record keeping and other compliance requirements.* The proposed measurement procedures would increase the reporting/record keeping requirements of parties responsible for Part 15 intentional radiators to the extent that the range of frequencies that must be measured has been increases slightly. However the format and content of the reporting/recording requirements has not been significantly modified.

VI. *Federal rules which overlap or conflict with this rule.* None.

VII. *Any significant alternates minimizing impact on small entities and consistent with the stated objectives.* None.

10. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the office of Management and Budget as prescribed by the Act.

11. For further information on this proceeding, contact Richard Fabina, FCC Laboraory, 7435 Oakland Mills Road, Columbia, MD 21046, telephone (301) 725–1585. For further information concerning Part 15 of the Commissions Rules contact, FCC, Technical Standards Branch, Room 7122, 2025 M St. NW., Washington, DC 20554, telephone (202) 653–6288.

List of Subjects in 47 CFR Part 15

Radio frequency devices.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–15981 Filed 7–6–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 15

[General Docket 89–177; FCC 89–155]

RIN 3060–AD68

FCC Procedure for Measuring FR Emissions From Intentional Radiators With Periodic Operation and Associated Superregenerative Receivers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to establish a new procedure for measuring the electromagnetic emissions of intentional radiators with periodic operation and associated superregenerative receivers that operate under Part 15 of its rules. This new procedure is necessary due to the changes in technical standards and measurement requirements for such devices that were adopted in the Commission's recent comprehensive revision of the Part 15 rules in GEN. Docket 87–389. In order to make the test procedure more readily available and to clarify that it has the force of rules, the Commission intends to include the test procedure in its rules.

DATES: Comments are due to be filed August 21, 1989. Reply comments are due to be filed September 5, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyle, telephone (301) 725–1585.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in GEN. Docket 89–117, adopted May 12, 1989, and released June 29, 1989. The full text of the Commission proposal, including the proposed test procedure, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street NW., Washington, DC. The complete text of this proposal, including the proposed test procedure, may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037.

The following collection of information contained in this proposed

rule making has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. A copy of any comments made should also be sent to the Federal Communications Commission, Office of the Managing Director, Washington DC 20554. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: None.

Title: 47 CFR 15.31(a)—Reporting and Recordkeeping Requirements for Radio Frequency Device Test Procedures (TP–6).

Action: New Collection.

Respondents: Businesses (including small businesses).

Frequency of Response: Recordkeeping and on occasion reporting.

Estimated Annual Burden: 450 responses; 6,750 total hours; 15 hours each.

Needs and Uses: Data gathered using these test procedures, and reported to the Commission or retained by the appropriate party, will be used by the Commission to determine compliance of the proposed equipment with the Commission's Rules.

Summary of the Notice of Proposed Rule Making

1. By this action, the Commission proposed to establish a new procedure for measuring electromagnetic emissions from intentional radiators with periodic operation and associated superregenerative receivers that operate under Part 15 of the Commissions' Rules. This new procedure, "FCC Procedure for measuring RF Emissions from Intentional Radiators with Periodic Operation and Associated Superregenerative Receivers, FCC/OET TP–6" (TP–6), is intended to set forth uniform methods for testing such devices for compliance with the technical standards adopted in the Commission's recent comprehensive revision of Part 15. The new procedure would replace the existing measurement procedure set forth in FCC publication "OST Bulletin MP–1" (MP–1).

2. In the *First Report and Order* in Docket No. 87–389 (Docket No. 87–389), the Commission, *inter alia*, revised a number of the technical standards that apply to periodic transmitters and their associated superregenerative receivers, including the limits on permissible line-conducted and radiated EME, the permissible bandwidth occupied by their fundamental signal, the permissible operating frequencies and the permissible frequency deviation. The Commission also established certain specifications for measuring RF devices for compliance with the Part 15 technical standards.

3. The new Part 15 rules permit the operation of new types of periodic transmitters for which new measurement procedures must be developed. In addition, the measurement procedures for the types of such devices authorized under the existing rules will need to be revised when the new Part 15 rules become effective. The measurement procedure TP–6 is resigned to address these needs for both new and modified test procedures. The proposed TP–6 would have the full force and effect of FCC regulations.

4. The proposed TP–6 specifies the test environment, test instrumentation, configuration of the equipment under test and instructions for setting up and performing measurements to be used in evaluating periodic intentional radiators and associated superregenerative receivers for compliance with Part 15 technical standards. Instructions are provided for measuring: (1) Line conducted EME; (2) receiver antenna conducted power measurements; (3) radiated EME; (4) transmitter bandwidth; (5) transmitter frequency stability; and (6) transmitter duty cycle. The proposed TP–6 also provides instructions for recording/reporting the test results.

5. Comments are requested on the degree to which the proposed measurement procedure would provide an effective means of evaluating periodic transmitters and associated receivers for compliance with the rules. Comments are also sought on the burden, in terms of both direct costs and time to complete tests, this procedure would impose on those who evaluate Part 15 periodic intentional radiators and associated superregenerative receivers. We invite suggestions for minimizing this burden in a manner that would not compromise the quality and consistency of the test measurements. In addition, comments are requested on whether the format of the test procedure is clear and whether the level of guidance furnished in the procedure is sufficient to permit the procedures to readily performed. Interested parties are requested to suggest changes which would improve the accuracy and repeatability of the test results when measurements are performed at different facilities.

6. In order to make the proposed test procedures more readily available and to clarify that they have the force of rules, the Commission intends to include the test procedures in its rules. The Commission welcomes comments on all aspects of the proposed test procedures and any other issues that may bear on the effectiveness of these procedures for safeguarding the radio frequency environment with the minimum burden on equipment suppliers. However, the Commission does not intend to consider comments that deal with issues that were previously decided or are being addressed in related proceedings. In particular, the Commission will not consider comments proposing changes in the technical standards for periodic transmitters and associated receivers.

Procedural Matters

7. Under the procedures set out in § 1.415 of the Commission's Rules, interested persons may file comments on or before (Date), 1989, and reply comments on or before (Date), 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided such information or writing indicating the nature and source of such information is placed in the public file and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

8. In accordance with the provisions of § 1.419 of the Commission's Rules, formal participants shall file an original and five (5) copies of their comments and other materials. Participants wishing each Commissioner to have a copy of their comments should file an original and 11 copies. Members of the public who wish to express their comments are given the same consideration regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours at the Commission's Public Reference Room at its headquarters in Washington, DC.

9. This is a non-restricted notice and comment rule making proceeding. *See* 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Initial Regulatory Flexibility Analysis

10. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the

Commission's initial analysis is as follows:

I. *Need and purpose of this action.* The purpose of this proposed procedure is to set forth uniform methods for testing periodic transmitters and associated receivers for compliance with the recent comprehensive revision of Part 15 of the Commission's Rules adopted in the *First Report and Order* in GEN. Docket No. 87–389. Since the existing measurement procedures used to evaluate these devices are not satisfactory for evaluating devices under the revised rules, it is necessary to develop a new measurement procedure.

II. *The objectives.* Our objective in proposing this new measurement procedure for intentional radiators is to provide the basis for a consistent and repeatable test program for evaluating these devices for compliance with the newly revised rules.

III. *Legal basis.* The actions proposed herein are taken pursuant to the authority contained in sections 4(i), 301, 302, 303, 304, and 307 of the Communications Act of 1934, as amended.

IV. *Description of potential impact and number of small entities affected.* The Commission believes that the proposed measurement procedure will benefit manufacturers and test laboratories by speeding testing and reducing compliance costs. The proposed test procedure would modify the present procedures for measuring intentional radiators. Its adoption potentially would affect all manufacturers of intentional radiators and laboratories performing equipment authorization tests on such devices. However, the exact number of small entities affected is not known.

V. *Recording, record keeping and other compliance requirements.* The proposed measurement procedures would increase the reporting/record keeping requirements of parties responsible for Part 15 intentional radiators to the extent that the range of frequencies that must be measured has been increased slightly. However the format and content of the reporting/recording requirements has not been significantly modified.

VI. *Federal rules which overlap or conflict with this rule.* None.

VII. *Any significant alternates minimizing impact on small entities and consistent with the stated objectives.* None.

11. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

12. For further information on this proceeding, contact Hugh Van Tuyl, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, telephone (301) 725–1585. For further information concerning Part 15 of the Commission's Rules contact, FCC, Technical Standards Branch, Room 7122, 2025 M Street NW., Washington, DC 20554, telephone (202) 653–6288.

List of Subjects in 47 CFR Part 15

Radio frequency devices.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–15980 Filed 7–6–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 15

[General Docket 89–118; FCC 89–156]

RIN 3060–AD68

FCC Procedure for Measurement of Unintentional Radiators (Except Digital Devices and Devices Operating Below 30 MHz)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to establish a new procedure for measuring the electromagnetic emissions of unintentional radiators with periodic operation and associated superregenerative receivers that operate under Part 15 of its rules. This new procedure is necessary due to the changes in technical standards and measurement requirements for such devices that were adopted in the Commission's recent comprehensive revision of the Part 15 rules in GEN. Docket 87–389. In order to make the test procedure more readily available and to clarify that it has the force of rules, the Commission intends to include the test procedure in its rules.

DATES: Comments are due to be filed August 21, 1989. Reply Comments are due to be filed September 5, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard Fabina, telephone (301) 725–1585.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in GEN. Docket 89–118, adopted May 12, 1989, and released June 29, 1989. The full text of the Commission proposal, including the proposed test procedure, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street NW., Washington, DC. The complete text of this proposal, including the proposed test procedure, may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037.

The following collection of information contained in this proposed rule making has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. A copy of any comments made should also be sent to the Federal Communications Commission, Office of the Managing Director, Washington DC 20554. For further information contact Jerry Cowden, Federal Communications Commission. (202) 632–7513

OMB Number: None.

Title: 47 CFR 15.31 (a)—Reporting and Recordkeeping Requirements for Radio Frequency Device Test Proocedure (TP–4)

Action: New Collection

Respondents: Businesses (including small businesses)

Frequency of Response: Recordkeeping and on occasion reporting

Estimated Annual Burden: 775 responses; 3700 recordkeepers; 67,125 total hours; 15 hours each

Needs and Uses: Data gathered using these test procedures, and reported to the Commission or retained by the appropriate party, will be used by the Commission to determine compliance of the proposed equipment with the Commission's Rules.

Summary of the Notice of Proposed Rule Making

1. By this action, the Commission proposes to establish a new procedure for measuring electromagnetic emissions from most unintentional radiators operating under Part 15 of the Commission's rules. This new procedure, "FCC Procedure for Measurement of Unintentional

Radiators (Except Digital Devices, and Devices Operating below 30 MHz) FCC/OET TP–4" (TP–4) is intended to set forth uniform testing methods for testing such devices for compliance with the technical standards adopted in the Commission's recent comprehensive revision of Part 15.

2. In the *First Report and Order* in GEN. Docket No. 87–389 (Docket No. 87–389) the Commission, *inter alia*, adopted new classifications for non-licensed RF devices permitted to operate under Part 15. One of the new classifications, unintentional radiators, includes devices that intentionally generate RF energy for use within the device or that send signals by conduction to associated equipment via connecting wires but which are not intended to emit RF energy by radiation or induction. Examples of unintentional radiators include radio and TV receivers, TV interface devices, and cable terminal devices. These devices were classified as restricted radiation devices under the former Part 15 rules.

3. In Docket No. 87–389, the Commission revised a number of the technical standards that apply to unintentional radiators, including the limits on permissible electromagnetic emissions (EME) from such devices. The Commission also specified certain requirements for measuring EME from such devices for the purpose of determining compliance with the rules. For example, the rules were amended to specify the use of instrumentation with peak, average and quasi-peak detector functions, extend the range of frequencies to be measured for EME to include frequencies above 1000 MHz, standardize the range of the scan height of the measuring receiver antenna at 1 to 4 meters and establish the measurement distance for most unintentional radiators at a uniform 3 meters.

4. The Commission currently employs several measurement procedures for evaluating Part 15 unintentional radiator devices for compliance with the rules. Emissions from TV interface devices and transfer switch characteristics are measured using OET Bulletin MP–3. The procedure for measurement of the UHF noise figure from TV receivers is set forth in OET Bulletin MP–2. Cable input selector switch isolation is measured using the procedures in OET Bulletin MP–9. Other types of unintentional radiators are tested using unpublished, but generally accepted methods for measuring line-conducted and radiated EME from RF devices.

5. The new Part 15 rules include revised operational standards and new measurement standards for most unintentional radiators which necessitate revision of the measurement procedures for such devices. The measurement procedure TP–4 is designed to address these needs for revisions to the Part 15 test procedures for unintentional radiators. The new procedure, which is presented in Appendix A, would provide measurement instructions for the majority of unintentional radiators. However, measurement of digital devices, CB Receivers, carrier current systems and cable isolation switches for compliance with the technical standards requires special procedures not applicable to other types of unintentional radiators. In addition, measurement of the UHF noise figure of TV receivers requires a special procedure. Measurement of these devices and TV UHF noise figure therefore will continue to be addressed in separate procedures.

6. The proposed TP–4 continues the existing practice of measuring TV receivers on all VHF channels and measuring the UHF oscillator frequencies of such receivers as required under § 15.31(n). This measurement requirement was not addressed in Docket No. 87–389, however, in reviewing this rule we believe that it may not be necessary to measure TV receivers this extensively. For example, it may be more desirable to measure TV receivers a fixed number of VHF and UHF channels. For example, measurements would be made on three VHF channels 2, 6, and 13 and three representative UHF channels 14, 39, and 69. We are considering changing § 15.31(n) of the rules to reduce the current testing burden and request comment on this procedure.

7. Comments are requested on the degree to which the proposed measurement procedure would provide an effective means of evaluating unintentional radiators for compliance with the rules. Comments are also sought on the burden, in terms of both direct costs and time to complete tests, this procedure would impose on those who evaluate unintentional radiators. The Commission invites suggestions for minimizing this burden in a manner that would not compromise the quality and consistency of the test measurements. In addition, comments are requested on whether the format of the test procedure is clear and whether the level of guidance furnished in the procedure is sufficient to permit the procedures to readily performed. Interested parties are requested to suggest changes which would improve the accuracy and repeatability of the test results when measurements are performed at different facilities.

8. In order to make the proposed test procedures more readily available and to clarify that they have the force of rules, the Commission intends to include the test procedures in its rules. The Commission welcomes comments on all aspects of the proposed test procedures, and any other issues that may bear on the effectiveness of these procedures for safeguarding the radio frequency environment with the minimum burden on equipment suppliers. However, it does not intend to consider comments that deal with issues that were previously decide or are being addressed in related proceedings. In particular, it will not consider comments proposing changes in the technical standards for unintentional radiators.

Procedural Matters

9. Under the procedures set out in § 1.415 of the Commission's rules, interested persons may file comments on or before (Date), 1989, and reply comments on or before (Date), 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided such information or writing indicating the nature and source of such information is placed in the public file and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

10. In accordance with the provisions of § 1.419 of the Commission's rules, formal participants shall file an original and five (5) copies of their comments and other materials. Participants wishing each Commission to have a copy of their comments should file an original and 11 copies. Members of the public who wish to express their comments are given the same consideration regardless of the numbers of copies submitted. All documents will be available for public inspection during regular business hours at the Commission's Public Reference Room at its headquarters in Washington, DC.

11. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contracts.

Initial Regulatory Flexibility Analysis

12. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's initial analysis is as follows:

I. *Need and purpose of this action.* The purpose of this proposed procedure is to set forth uniform methods for testing periodic transmitters and associated receivers for compliance with the recent comprehensive revision of Part 15 of the Commission's rules adopted in the *First Report and Order* in GEN. Docket No. 87–389. Since the existing measurement procedures used to evaluate these devices are not satisfactory for evaluating devices under the revised rules, it is necessary to develop a new measurement procedure.

II. *The objectives.* Our objective in proposing this new measurement procedure for unintentional radiators is to provide the basis for a consistent and repeatable test program for evaluating these devices for compliance with the new revised rules.

III. *Legal basis.* The actions proposed herein are taken pursuant to the authority contained in sections 4(i), 301, 302, 303, 304, and 307 of the Communications Act of 1934, as amended.

IV. *Description of potential impact and number of small entities affected.* The Commission believes that the proposed measurement procedure will benefit manufactures and test laboratories by speeding testing and reducing compliance costs. The proposed test procedure would modify the present procedures for measuring unintentional radiators. Its adoption potentially would affected all manufacturers of unintentional radiators and laboratories performing equipment authorization tests on such devices. However, the exact number of small entities affected is not known.

V. *Recording, record keeping and other compliance requirements.* The proposed measurement procedures would increase the reporting/record keeping requirements of parties responsible for Part 15 unintentional radiators to the extent that the range of frequencies that must be measured has been increased slightly. However, the format and content of the reporting/recording requirements has not be significantly modified.

VI. *Federal rules which overlap or conflict with this rule.* None.

VII. *Any significant alternates minimizing impact on small entities and consistent with the stated objectives.* None.

13. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the office of Management and Budget as prescribed by the Act.

14. For further information on this proceeding, contact Hugh Van Tuyle, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, telephone (301) 725–1585. For further information concerning Part 15 of the Commissions rules contact, FCC, Technical Standards Branch, Room 7122, 2025 M Street NW., Washington DC 20554, telephone (202) 653–6288.

List of Subjects in 47 CFR, Part 15

Radio frequency devices.

Federal Communications Commission,

Donna R. Searcy,

Secretary.

[FR Doc. 89–15982 Filed 7–6–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–298, RM–6703]

Radio Broadcasting Services; Decorah, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Decorah Radio, Inc. seeking the substitution of Channel 263C2 for Channel 265A at Decorah, Iowa, and the modification of its permit for Station KRDI–FM to specify the higher powered channel. Channel 263C2 can be allotted to Decorah in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 kilometers (1.8 miles) north to accommodate petitioner's desired site.

DATES: Comments must be filed on or before August 21, 1989, and reply comments on or before September 5, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis F. Begley, Esq., Reddy, Begley & Martin, 2033 M Street, NW., Suite 500, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–298, adopted June 15, 1989, and released June 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–15983 Filed 7–6–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–300, RM–6708]

Radio Broadcasting Services; York, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Gleason Bradcasting Company, Inc. seeking the substitution of Channel 285C2 for Channel 285A at York, Nebraska, and the modification of its license for Station KAWL–FM to specify operation on the higher powered channel. Channel 285C2 and be allotted to York in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.0 kilometers (3.1 miles) southwest to avoid a short-spacing to Station KTCH–FM, Wayne, Nebraska, and to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 40–49–51 and West Longitude

97–37–06. In accordance with § 1.402(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the channel of York or require the petitioner to demostrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before August 21, 1989, and reply comments on or before September 5, 1989.

ADDRESS: Federal Communications Comission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Anne Thomas Paxson, Esq., Bechtel, Borsari, Cole & Paxson, 2101 L Street, NW., Suite 502, Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–300, adopted June 15, 1989, and released June 30, 1989. The full text of this Commission decision is available for inspection and copying during normal hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. the complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR 73

Radio broadcasting.

Federal Communications Commission

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–15984 Filed 7–6–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–299, RM–6696]

Radio Broadcasting Services; Lopez, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Robin B. Thomas seeking the allotment of Channel 233A to Lopez, Pennsylvania, as its first local FM service. Petitioner is requested to furnish additional information to demonstrate that Lopez is a community for allotment purposes. Channel 233A can be allotted to Lopez in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 41–27–28 and West Longitude 76–20–00. Canadian concurrence is required since Lopez is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 21, 1989, and reply comments on or before September 5, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robin B. Thomas, R.D. 1, Box 114A, Muncy, Pennsylvania 17756 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–299, adopted June 15, 1989, and released June 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (20) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–15985 Filed 7–6–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 512

[Docket No. 78–10; Notice 9]

RIN 2127–AC95

Confidential Business Information

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking and response to a petition for rulemaking.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is proposing to revise its existing regulation contained in 49 CFR Part 512—Confidential Business Information. Revisions to the existing regulation are necessary to ensure efficient processing and proper protection of business information received by NHTSA. This action is intended to clarify certain provision, to revise certain sections to conform to statutory and case law, to include additional class determinations and to respond to a petition from General Motors Corporation recommending that the agency consider adding a presumptive class determination. The agency requests comments on the proposed changes discussed in this notice.

DATE: Comments must be received by August 21, 1989.

ADDRESS: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. E. William Fox, Office of the Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–1834.

SUPPLEMENTARY INFORMATION: NHTSA published Part 512, entitled "Confidential Business Information," a final rule on June 7, 1982, 47 FR 24587. This regulation has not been amended or revised since that time.

The agency believes that the procedures for submitting confidential business information have generally worked well since 1982, but practical experience in processing this information has shown that some improvements and clarifications should be considered. The modifications being proposed are described below.

Assertion of Claim

The agency is proposing to require that submitters of allegedly confidential business information submit two copies of the documents containing such information instead of one. This proposed amendment to § 512.4(a)(4) of the regulation would permit the agency's technical staff to utilize one copy of the information while the second copy is being evaluated by the Chief Counsel pursuant to the submitter's claim for confidentiality. Since the submitted material is being reproduced for the agency by the submitter in the first instance, the agency believes that the submitter is in a better position to make a second copy initially than is the agency after the material has been received. This change will expedite the processing of confidentiality requests at the agency and constitute a minimal burden upon the submitter.

This proposal excepts blueprints from the requirement for two copies because (1) the current regulation presumptively determines that the disclosure of blueprints will likely result in competitive harm; and (2) blueprints are generally bulky and difficult to copy without extra expense and effort. The presumption normally allows for expedited processing of claims for confidentiality relating to blueprints which makes the extra expense and effort for copying them unnecessary.

The Claim of Confidentiality for Privileged Information

The agency is proposing to insert the term "privileged" in § 512.4(b)(3)(i) and § 512.5. These proposed changes would modify the regulation to conform more closely to the language of Exemption 4 of the Freedom of Information Act (the "Act"), 5 U.S.C. 552(b)(4). Although the term "privileged" was omitted from the original regulation, the agency has consistently followed the applicable judicial decisions construing the Act, which includes this term. This amendment will permit the agency to avoid the appearance of being unwilling to consider future claims for confidential treatment based solely upon "privilege," as such claims may be recognized under applicable case law.

Impairment of Protectable Government Interests

Courts have determined that in some instances business information may be protected from disclosure in order to protect an identifiable government interest. *9 to 5 Organization for Women Office Workers* v. *Board of Governors of the Federal Reserve System*, 721 F.2d 1 (1st Cir. 1983); *National Parks & Conservation Association* v. *Morton*, 498 F.2d 765, 770 n. 17 (D.C. Cir. 1974). The agency proposes to add § 512.5(c) in recognition of this additional consideration. This proposed change would also be reflected in § 512.4(b)(3)(viii).

Submitter's Supporting Certification

Under the current regulation, submitters of allegedly confidential information must submit a certification that a diligent inquiry has been made to insure that the information has not been disclosed, or appeared publicly. Appendix A to the regulation requires that the certification take the form of an affidavit. NHTSA believes that it is important for submitters to make special inquiries about the nature of the information being submitted to avoid the making of frivolous claims. However, the use of an affidavit may be unduly burdensome for many submitters since the same purposes may be affected through the use of a certification which need not be notarized. See 28 U.S.C. 1746 and 18 U.S.C. 1001. Accordingly, the agency proposes to replace the form of affidavit in Appendix A with a form of certification. Nevertheless, the agency would continue to accept affidavits which contain the statements contained in the proposed Appendix A.

Reconsideration Request Procedures

A new section, § 512.7, entitled "Petitions for reconsideration upon denial of a request for confidential treatment," is proposed, and § 512.6 is reorganized. This new section provides for essentially the same procedures established by the present regulation at § 512.6(g), but the agency believes that the new provisions clarify questions that may arise concerning specific issues, such as extension requests and notification to the submitter of the agency's decision. Proposed § 512.7(a) provides specifically that determinations responding to petitions for reconsideration will be administratively final. To insure that submitters have a full opportunity to present their justification to the agency, we propose to remove the limitation that petitions may be based only upon information or arguments not available at the time of the original request. Nevertheless, we continue to encourage submitters to include all relevant information with the initial submission to avoid unnecessary correspondence and duplicative work.

New Class Determinations

The agency proposes to add new class determinations in Appendix B to the types of information that would presumptively be likely to result in substantial competitive harm if publicly disclosed. Based upon the agency's experience with the regulation over the past six years, it is proposed that the presumptions apply to projected production as well as sales figures for vehicles. Protection will be granted only until the end of the model year to which the information pertains because experience has shown that vehicle figures become available through public sources, such as trade publications, at that time.

The agency also tentatively concludes that protection for model specific product plans should be revised. Confidential treatment of product plans under the agency's proposal would be limited to the beginning of the applicable model year since product plans lose their competitive value once the product line is introduced.

Submitters would continue to be required under the proposed regulation, § 512.4(i) (currently § 512.4(h)) to notify the agency of any information, previously determined to be confidential, which becomes publicly available, as well as to submit the certification required under § 512.4(e).

NHTSA has received a petition from General Motors Corporation to amend the class determinations in Appendix B to include cost information as a type of information that would presumptively be likely to result in substantial competitive harm if disclosed to the public. The following language was suggested:

> Cost information relating to any aspect of product cost, including but not limited to purchased material costs, labor costs, equipment costs, and wholesale parts costs.

In the petition, General Motors cites several judicial decisions in which

various types of costs have been protected from disclosure and states that the agency typically grants confidential treatment for manufacturers' cost information. They conclude that it is, therefore, a needless use of both manufacturer and agency resources to require the manufacturer to substantiate, and the agency to review, each claim for confidential treatment relating to cost information. The General Motors petition has been placed in the public docket.

NHTSA agrees that the agency has generally withheld actual detailed cost information pursuant to Exemption 4 of the Freedom of Information Act, especially as such data relate to development, distribution and product. However, we are concerned that General Motors' proposed language may be overbroad because it does not distinguish between general cost estimates or ranges of cost and specific actual cost data directly relating to the product. Moreover, certain kinds of cost information may already be in the public domain or otherwise be widely disseminated among the retail automobile dealerships of the company so that any confidentiality claim would be effectively compromised.

Nevertheless, we would like to receive comments from the public on the General Motors proposal. We especially invite suggestions on how, if at all, a class determination could be drafted in a way that avoids impermissively broad language, without enumerating many detailed examples of confidential cost information which have been approved by the courts.

Miscellaneous Revisions

Revisions to other portions of the regulation have been proposed in order to provide a clearer and more effective presentation. We have also attempted to remove provisions that have become obsolete or have proved to be superfluous.

We propose to remove references in the regulation to the term "significant competitive damage," which is contained in Title V of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001 *et seq.*, and to incorporate the phrase into the definition of "substantial competitive harm" in § 512.3.

The proposal would also simplify portions of § 512.6 pertaining to the timing of agency determinations and specifically provide that documents purged of allegedly confidential information be placed directly in appropriate public files or dockets.

In § 512.4(j) (currently § 512.4(i)) the agency proposes to remove the provision that the agency shall deny claims for confidential treatment that do not include the certification required by § 512.4(e) because such a requirement is unnecessarily harsh. The agency tentatively concludes that it is sufficient that noncompliance with any of the provisions in § 512.4 may result in a denial of a claim for confidential treatment.

The agency has determined that, under the current regulation, submitters may technically rely on the presumptive class determinations in Appendix B in order to obtain more than two decisions from the Chief Counsel relating to their claim for confidential treatment. This is discriminatory to other submitters, and there is potential for abuse of the process by making intentionally erroneous presumptive classification claims. Therefore, the agency proposes that the additional time granted to a submitter who relies on a class determination be removed from § 512.4(c)(2)(ii), and that, like everyone else, such submitter receive only one opportunity for reconsideration.

The agency also tentatively concludes that the definition relating to voluntary submissions in § 512.5(a)(2) of the current regulation should be changed to reflect more accurately the case law. The agency proposes to amend the language of § 512.5(b) so that any apparent conflict between the regulation and the applicable judicial decisions is removed. Whether future submissions of information could be compelled is only a factor to be considered in deciding if governmental access to information will be impaired by disclosure, but it is not necessarily dispositive. *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1291 n. 29 (D.C. Cir. 1983); *Washington Post Co.* v. *HHS*, 690 F.2d 252 (D.C. Cir. 1982).

Finally, we propose to combine the sections currently numbered as §§ 512.8 and 512.10 into § 512.9 of the regulation since both sections relate to the conditions under which information claimed or determined to be confidential may be released.

Comments

Interested persons are invited to comment on this proposal. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. (49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by August 21, 1989.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 78–10; Notice 9 of the NHTSA Docket Section in Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Federalism Assessment

The agency has considered whether this action would have any federalism implications. We have determined that this proposal would not have any impact upon the principles of federalism.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. The proposed amendments would have a minimal effect on submitters of alleged confidential information to the agency. This determination has been made because the regulation is essentially procedural. It will not have an appreciable impact on the cost of seeking confidential treatment for data submitted to the agency. It will also not have an appreciable impact on what information is or is not accorded confidential protection. Therefore, neither a draft Regulatory Analysis nor a Preliminary Evaluation is required.

In compliance with the Regulatory Flexibility Act, the agency has evaluated the effects of this rule on small entities. For the reasons stated above, I certify that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

The requirements of Part 512 are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, the existing requirements of Part 512 have been submitted to and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through June 30, 1989. Under this proposed revision these requirements remain collection requirements within the meaning published in 5 CFR Part 1320, and a request for continued approval is being submitted to OMB concurrently with this notice.

The agency has also analyzed this action for the purpose of the National Environmental Policy Act. The agency has determined that this action would not have any effect on the human environment.

List of Subjects in 49 CFR Part 512

Administrative practice and procedure, Confidential business information, Freedom of information, Motor vehicle safety, Reporting and recordkeeping requirements.

In accordance with the foregoing, NHTSA proposes the revision of Part 512 of Title 49 of the Code of Federal Regulations as follows:

PART 512—CONFIDENTIAL BUSINESS INFORMATION

Sec.

512.1 Purpose and scope.
512.2 Applicability.
512.3 Definitions.
512.4 Asserting a claim for confidential treatment of information.
512.5 Substantive standards for affording confidential treatment.
512.6 Determination of confidential treatment.
512.7 Petitions for reconsideration upon denial of a request for confidential treatment.
512.8 Modification of confidentiality determinations.
512.9 Release of confidential business information.
512.10 Class determinations.

Appendix A to Part 512—Certificate In Support of Request for Confidentiality

Appendix B to Part 512—Class Determinations

Appendix C to Part 512—OMB Clearance

Authority: 49 U.S.C. 322; 5 U.S.C. 552; 15 U.S.C. 1401; 15 U.S.C. 1402; 15 U.S.C. 1407; 15 U.S.C. 1418; 15 U.S.C. 1914; 15 U.S.C. 1944; 15 U.S.C. 1990d; 15 U.S.C. 2005; 15 U.S.C. 2029; delegation of authority at 49 CFR 1.50.

§ 512.1 Purpose and scope.

The purpose of this part is to establish the procedure by which NHTSA will consider claims that information submitted to the agency, or which the agency otherwise obtains, is confidential business information, as described in 5 U.S.C. 552(b)(4).

§ 512.2 Applicability.

(a) This part applies to all information which is submitted to NHTSA, or which NHTSA otherwise obtains, except as provided in paragraph (b) of this section.

(b) Information received as part of the procurement process is subject to the Federal Acquisition Regulation, 48 CFR, Chapter 1, as well as this part. In any case of conflict between the Federal Acquisition Regulation and this part, the provisions of the Federal Acquisition Regulation prevail.

§ 512.3 Definitions.

"Administrator" means the Administrator of the National Highway Traffic Safety Administration.

"Chief Counsel" means the Chief Counsel of the National Highway Traffic Safety Administration.

"Confidential business information" means information described in 5 U.S.C. 552(b)(4).

"NHTSA" means the National Highway Traffic Safety Administration.

"Substantial competitive harm" encompasses "significant competitive damage" under Title V of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001 *et seq.*

§ 512.4 Asserting a claim for confidential treatment of information.

(a) Any person submitting information to NHTSA and requesting that the information be withheld from public disclosure as confidential business information shall:

(1) Stamp or mark "confidential," or some other term which clearly indicates the presence of information claimed to be confidential, on the top of each page containing information claimed to be confidential.

(2) On each page marked in accordance with paragraph (a)(1) of this section, mark each item of information which is claimed to be confidential with brackets "[ ]".

(3) If an entire page is claimed to be confidential, indicate clearly that the entire page is claimed to be confidential.

(4) Submit two copies of the documents containing allegedly confidential information (except only one copy of blueprints) and one copy of the documents from which information claimed to be confidential has been deleted to the Office of Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590. Include the name, address, and telephone number of a representative for receipt of a response from the Chief Counsel under this part.

(5) If a document containing information claimed to be confidential is submitted in connection with an investigation or proceeding, a rulemaking action, or pursuant to a reporting requirement, for which there is a public file or docket, simultaneously submit to the appropriate NHTSA official a copy of the document from which information claimed to be confidential has been deleted. This copy will be placed in the public file or docket pending the resolution of the claim for confidential treatment.

(b) (1) When submitting each item of information marked confidential in accordance with paragraph (a) of this section, the submitter shall also submit to the Office of the Chief Counsel information supporting the claim for confidential treatment in accordance with paragraph (b)(3) and paragraph (e) of this section.

(2) If submission of the supporting information is not possible at the time the allegedly confidential information is submitted, a request for an extension of time in which to submit the information, accompanied by an explanation describing the reason for the extension and the length of time needed, must be submitted. The Chief Counsel shall determine the length of the extension. The recipient of an extension shall submit the supporting information in accordance with the extension determination made by the Chief Counsel and paragraph (b)(3) of this section.

(3) The supporting information must show:

(i) That the information claimed to be confidential is a trade secret, or commercial or financial information that is privileged or confidential.

(ii) Measures taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to any person, company, or organizataion other than the submitter of the information.

(iii) Insofar as is known by the submitter of the information, the extent to which the information has been disclosed, or otherwise become available, to persons other than the submitter of the information, and why such disclosure or availability does not compromise the confidential nature of the information.

(iv) Insofar as is known by the submitter of the information, the extent to which the information has appeared publicly, regardless of whether the

submitter has authorized that appearance or confirmed the accuracy of the information. The submitter must include citations to such public appearances, and an explanation of why such appearances do not compromise the confidential nature of the information.

(v) Prior determinations of NHTSA or other Federal agencies or Federal courts relating to the confidentiality of the submitted information, or similar information possessed by the submitter including class determinations under this part. The submitter must include any written notice or decision connected with any such prior determination, or a citation to any such notice or decision, if published in the **Federal Register.**

(vi) Whether the submitter of the information asserts that disclosure would be likely to result in substantial competitive harm, what the harmful effects of disclosure would be, why the effects should be viewed as substantial, and the casual relationship between the effects and disclosure.

(vii) If information is voluntarily submitted, within the meaning of § 512.5(b), why disclosure by NHTSA would be likely to impair NHTSA's ability to obtain similar information in the future.

(viii) Whether the submitter of the information asserts that disclosure would be likely to impair other protectable government interests, what the effect of disclosure is likely to be and why disclosure is likely to impair such interests.

(ix) The period of time for which confidentiality is claimed (permanently or until a certain date or until the occurrence of a certain event) and why earlier disclosure would result in the harms set out in paragraphs (b)(2)(vi), (vii) or (viii) of this section.

(c) If any element of the showing to support a claim for confidentiality required under paragraph (b)(3) of this section is presumptively established by a class determination, as issued pursuant to § 512.10, affecting the information for which confidentiality is claimed, the submitter of information need not establish that element again.

(d) Information in support of a claim for confidentiality submitted to NHTSA under paragraph (b) of this section must consist of objective data to the maximum extent possible. To the extent that opinions are given in support of a claim for confidential treatment of information, the submitter of the information shall submit in writing to NHTSA the basis for the opinions, and the name, title and credentials showing the expertise of the person supplying the opinion.

(e) The submitter of information for which confidential treatment is requested shall submit to NHTSA with the request a certification in the form set out in Appendix A from the submitter or an agent of the submitter that a diligent inquiry has been made to determine that the information has not been disclosed, or otherwise appeared publicly, except as indicated n accordance with paragraphs (b)(3)(iii) and (iv) of this section.

(f) A single submission of supporting information, in accordance with paragraph (b) of this section, may be used to support a claim for confidential treatment of more than one item of information claimed to be confidential. However, general or nonspecific assertions or analysis may be insufficient to form an adequate basis for the agency to find that information may be afforded confidential treatment, and may result in the denial of a claim for confidentiality.

(g) Where confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter of the information is responsible for obtaining all information and a certification from the third party necessary to comply with paragraphs (b), (d), and (e) of this section.

(h) Information received by NHTSA that is identified as confidential and whose claim for confidentiality is submitted in accordance with this section will be kept confidential until a determination of its confidentiality is made under § 512.6 of this part. Such information will not be publicly disclosed except in accordance with this part.

(i) A submitter of information shall promptly amend supporting information provided under paragraphs (b) or (e) of this section if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when provided, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment.

(j) Noncompliance with this section may result in a denial of a claim for confidential treatment of information. Noncompliance with paragraph (i) of this section may subject a submitter of information to civil penalties.

(1) If the submitter fails to comply with paragraph (a) of this section at the time the information is submitted to NHTSA so that the agency is not aware of a claim for confidentiality, or the scope of a claim for confidentiality, the claim for confidentiality may be waived unless the agency is notified of the claim before the information is disclosed to the public. Placing the information in a public docket or file is disclosure to the public within the meaning of this part, and any claim for confidential treatment of information disclosed to the public may be precluded.

(2) If the submitter of the information does not provide all of the supporting information required in paragraphs (b)(3) and (e) of this section, or if the information is insufficient to establish that the information may be afforded confidential treatment under the substantive tests set out in § 512.5, a request that such information be afforded confidential protection may be denied. The Chief Counsel may notify a submitter of information of inadequacies in the supporting information, and may allow the submitter additional time to supplement the showing, but is under no obligation to provide either notice or additional time to supplement the showing.

§ 512.5 Substantive standards for affording confidential treatment.

Information submitted to or otherwise obtained by NHTSA may be afforded confidential treatment if it is a trade secret, or commercial or financial information that is privileged or confidential. Information is considered to be confidential when:

(a) Disclosure of the information would be likely to result in substantial competitive harm to the submitter of the information; or

(b) The information was voluntarily submitted, and failure to afford the information confidential treatment would impair the ability of NHTSA to obtain similar information in the future. Information whose production NHTSA could not compel by compulsory process may be considered to be voluntarily submitted information within the meaning of this part; or

(c) Disclosure of the information would be likely to impair other protectable government interests.

§ 512.6 Determination of confidential treatment.

(a) The decision as to whether an item of information shall be afforded confidential treatment under this part is made by the Office of Chief Counsel.

(b) Copies of documents submitted to NHTSA under § 512.4(a)(5), from which information claimed to be confidential or privileged has been deleted, are placed in the public file or docket pending the resolution of the claim for confidential treatment.

(c) When information claimed to be confidential or privileged is requested under the Freedom of Information Act, the determination of confidentiality is made within ten working days after NHTSA receives such a request, or within twenty working days in unusual circumstances as provided under 5 U.S.C. 522(a)(6).

(d) For information not requested pursuant to the Freedom of Information Act, the determination of confidentiality is made within a reasonable period of time at the discretion of the Chief Counsel.

(e) The time periods prescribed in paragraph (c) of this section may be extended by the Chief Counsel for good cause shown on the Chief Counsel's own motion, or on request from any person. An extension is made only in accordance with 5 U.S.C. 552, and is accompanied by a written statement setting out the reasons for the extension.

(f) If the Chief Counsel believes that information which a submitter of information asserts to be within a class of information set out in Appendix B is not within that class, the Chief Counsel:

(1) Notifies the submitter of the information that the information does not fall within the class as claimed, and briefly explains why the information does not fall within the class; and

(2) Renders a determination of confidentiality in accordance with paragraph (g) of this section.

(g) A person submitting information to NHTSA with a request that the information be withheld from public disclosure as confidential or privileged business information is given notice of the Chief Counsel's determination regarding the request as soon as the determination is made.

(1) If a request for confidentiality is granted, the submitter of the information is notified in writing of that determination and of any appropriate limitations.

(2) If a request for confidentiality is denied in whole or in part, the submitter of the information is notified in writing of that decision, and is informed that the information will be made available to the public not less than ten working days after the submitter of the information has received notice of the denial of the request for confidential treatment, if practicable, or some earlier date if the Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such earlier date. The written notification of a denial specifies the reasons for denying the request.

(h) There will be no release of information processed pursuant to this section until the Chief Counsel advises the appropriate office(s) of NHTSA that the confidentiality decision is final according to this section, § 512.7 or § 512.9.

§ 512.7 Petitions for reconsideration upon denial of a request for confidential treatment.

(a) A submitter of information whose request for confidential treatment is denied may petition for reconsideration of that denial. Petitions for reconsideration must be addressed to and received by the Office of Chief Counsel prior to the date on which the information would otherwise be made available to the public. The determination by the Chief Counsel upon such petition for reconsideration shall be administratively final.

(b) If submission of a petition for reconsideration is not feasible by the date on which the information would otherwise be made available to the public, a request for an extension of time in which to submit a petition, accompanied by an explanation describing the reason for the request and the length of time needed, must be received by the Office of Chief Counsel by that date. The Chief Counsel determines whether to grant or deny the extension and the length of the extension.

(c) Upon receipt of a petition or request for an extension, the Chief Counsel shall postpone making the information available to the public in order to consider the petition, unless the Chief Counsel determines in writing that disclosure would be in the public interest.

(d) If a petition for reconsideration is granted, the petitioner is notified in writing of that determination and of any appropriate limitations.

(e) If a petition for reconsideration is denied in whole or in part or a request for an extension for additional time to submit a petition for reconsideration is denied, the petitioner is notified in writing of that denial, and is informed that the information will be made available to the public not less than ten working days after the petitioner has received notice of the denial of the petition, if practicable, or some earlier date if the Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such earlier date. The written notification of a denial specifies the reasons for denying the petition.

§ 512.8 Modification of confidentiality determinations.

(a) A determination that information is confidential or privileged business information remains in effect in accordance with its terms, unless modified by a later determination based upon:

(1) Newly discovered or changed facts,

(2) A change in the applicable law,

(3) A class determination under § 512.10, or

(4) A finding that the prior determination is clearly erroneous.

(b) If NHTSA believes that an earlier determination of confidentiality should be modified based on one or more of the factors listed in paragraphs (a)(1) through (a)(4) of this section, the submitter of the information is notified in writing that NHTSA has modified its earlier determination and of the reasons for that modification, and is informed that the information will be made available to the public in not less than ten working days from the date of receipt of notice under this paragraph. The submitter may seek reconsideration of the modification pursuant to § 512.7.

§ 512.9 Release of confidential business information.

(a) Information that has been claimed or determined to be confidential business information under §§ 512.4, 512.6 and 512.7 may be disclosed to the public by the Administrator notwithstanding such determination or claim if disclosure would be in the public interest as follows:

(1) Information obtained under Part A, Subchapter I of the National Traffic and Motor Vehicle Safety Act, relating to the establishment, amendment, or modification of Federal motor vehicle safety standards, may be disclosed when relevant to a proceeding under that part.

(2) Information obtained under Part B, Subchapter I of the National Traffic and Motor Vehicle Safety Act, relating to motor vehicle safety defects, and failures to comply with applicable motor vehicle safety standards, may be disclosed if the Administrator determines that disclosure is necessary to carry out the purposes of the Act.

(3) Information obtained under Title I, V or VI of the Motor Vehicle Information and Cost Savings Act may be disclosed when that information is relevant to a proceeding under the title under which the information was obtained.

(b) No information is disclosed under this section unless the submitter of the information is given written notice of the Administrator's intention to disclose information under this section. Written notice is normally given at least ten working days before the day of release, although the Administrator may provide

shorter notice if the Administrator finds that such shorter notice is in the public interest. The notice under this paragraph includes a statement of the Administrator's reasons for determining to disclose the information, and affords the submitter of the information an opportunity to comment on the contemplated release of information. The Administrator may also give notice of the contemplated release of information to other persons, and may allow these persons the opportunity to comment. When a decision is made to release information pursuant to this section, the Administrator will consider ways to make the release with the least possible adverse effects to the submitter.

(c) Notwithstanding any other provision of this part, information which has been determined or claimed to be confidential business information, may be released:

(1) To Congress;

(2) Pursuant to an order of a court with valid jurisdiction;

(3) To the Office of the Secretary, United States Department of Transportation and other Executive branch offices or other Federal agencies in accordance with applicable laws;

(4) With the consent of the submitter of the information;

(5) To contractors, if necessary for the performance of a contract with the Administration. In such instances, the contract limits further release of the information to named employees of the contractor with a need to know and provides that unauthorized release constitutes a breach of the contract for which the contractor may be liable to third parties.

§ 512.10 Class determinations.

(a) The Chief Counsel may issue a class determination relating to confidentiality under this section if the Chief Counsel determines that one or more characteristics common to each item of information in that class will in most cases necessarily result in identical treatment of each item of information under this part, and that it is appropriate to treat all such items as a class for one or more purposes under this part. The Chief Counsel obtains the concurrence of the Office of the General Counsel, United States Department of Transportation, for any class determination that has the effect of raising the presumption that all information in that class is eligible for confidential treatment. Class determinations are published in the **Federal Register.**

(b) A class determination clearly identifies the class of information to which it pertains.

(c) A class determination may state that all of the information in the class:

(1) Is or is not governed by a particular section of this part, or by a particular set of substantive criteria under this part.

(2) Fails to satisfy one or more of the applicable substantive criteria, and is therefore ineligible for confidential treatment,

(3) Satisfies one or more of the applicable substantive criteria, and is therefore eligible for confidential treatment, or

(4) Satisfies one of the substantive criteria during a certain period of time, but will be ineligible for confidential treatment thereafter.

(d) Class determinations will have the effect of establishing rebuttable presumptions, and do not conclusively determine any of the factors set out in paragraph (c) of this section.

Appendix A to Part 512—Certificate in Support of Request for Confidentiality

I, _____, pursuant to the provisions of 49 CFR 512, state as follows:

(1) I am (official) and I am authorized by (company) to execute documents on behalf of (company):

(2) The information contained in (pertinent document[s]) is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4) (as incorporated by reference in and modified by the statute under which the information is being submitted.)

(3) I have personally inquired of the responsible (company) personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside (company).

(4) Based upon such inquiries, to the best of my knowledge the information for which (company) has claimed confidential treatment has never been released or become available outside (company) except as hereinafter specified:

(5) I make no representations beyond those contained in this certificate and in particular I make no representations as to whether this information may become available outside (company) because of unauthorized or inadvertent disclosure except as stated in Paragraph 4; and

(6) I certify under penalty of perjury that the foregoing is true and correct. Executed on this the _____. (If executed outside of the United States of America: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.)

(signature of official)

Appendix B to Part 512—Class Determinations

The Administration has determined that the following types of information would presumptively be likely to result in substantial competitive harm if disclosed to the public:

(1) Blueprints and engineering drawings containing process of production data where the subject could not be manufactured without the blueprints of engineering drawings except after significant reverse engineering;

(2) Future model specific product plans (to be protected only until the beginning of the model year to which the information pertains);

(3) Model specific projections of future vehicle production or sales figures (to be protected only until the end of the model year to which the information pertains).

Appendix C to Part 512—OMB Clearance

The OMB clearance number for this regulation is _____.

Issued on July 3, 1989.

Jeffrey R. Miller,

Acting Administrator, National Highway Traffic Safety Administration.

[FR Doc.89-16026 Filed 7-3-89; 4:18 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 54, No. 129
Friday, July 7, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 30, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection: (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contract person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Extension

- *Forest Service*

36 CFR 228 Subpart A—Locatable Minerals (National Forests Surface Use under U.S. Mining Laws)
None
On occasion
Individuals or households; Businesses or other for-profit; Small businesses or organizations; 10,313 responses; 20,626 hours; not applicable under 3504(h)
Norman F. Day (703) 235–9784

- *Forest Service*

Application for Permit Non-Federal Commercial Use of Roads Restricted by Order
FS–7700–40
On occasion
State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 2,000 responses; 500 hours; not applicable under 3504(h)
T. Zeally (703) 235–3122

- *Foreign Agricultural Service*

Request for Vessel Approval/Request for Vessel Approval (Cotton) CCC–105; CCC–105 (Cotton)
On occasion
Businesses or other for-profit; Small businesses or organizations; 548 responses; 1,370 hours; not applicable under 3504(h)
Donald R. Pickett (202) 447–6711

- *Rural Electrification Administration*

Manual for Preservation of Borrowers' Records (Electric)
REA Bulletin 180–2
Recordkeeping
Small businesses or organizations; 5,956 respondents; 19,120 hours; not applicable under 3504(h)
William E. Davis (202) 382–9450

- *Cooperative State Research Service*

Grant Application Kit
CSRS–661, 662, 663, and 55 and AD–1047, 1048, 1049 and 1050
Annually
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; 3,000 responses; 16,500 hours; not applicable under 3504(h)
Pat Shelton (202) 475–5050

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 89–15998 Filed 7–6–89; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 89–110]

Notice of Receipt of a Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organism	Field test location
89-150-01	Monsanto Agricultural Company	05-30-89	Genetically engineered cotton plants to express delta-endotoxin protein intended to confer lepidopteran insect resistance; cotton plants genetically engineered to confer glyphosate herbicide tolerance.	Hawaii.

Done in Washington, DC, this 30th day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-15999 Filed 7-6-89; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Mt. Reba Ski Area, Stanislaus National Forest, CA; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, Agriculture.

ACTION: Revised notice of intent.

SUMMARY: The Notice of Intent to prepare an environmental impact statement for the expansion of the Mt. Reba Ski Area was published in the **Federal Register** on Friday, October 30, 1981, 46 FR 53734. A Revised Notice of Intent setting new dates for the release of the draft environmental impact statement (DEIS) and the final environmental impact statement (FEIS) was published in the **Federal Register** on Thursday, September 23, 1982, 47 FR 42011.

The dates for release of the documents have again been changed. The DEIS will be available for public review September, 1989 and the FEIS will be issued in January, 1990.

DATES: Comments on this project must be received within 45 days following the release of the DEIS.

ADDRESSES: Submit written comments and suggestions concerning this project to Blaine Cornell, Forest Supervisor, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370.

FOR FURTHER INFORMATION CONTACT: Rich Phelps, Resource Officer, Calaveras Ranger District, P.O. Box 500, Hathaway Pines, CA 95233. Phone: (209) 795-1381.

SUPPLEMENTARY INFORMATION: All previous input and comments received by the Forest Service relative to this project will be considered during the preparation of this EIS.

After the comment period on the DEIS ends, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement.

The responsible official will review the EIS, considering the comments, responses, environmental consequences along with their mitigations, applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision.

Blaine L. Cornell,

Forest Supervisor.

Date: June 28, 1989.

[FR Doc. 89-15956 Filed 7-6-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Foreign Fishing Vessel Permit Application

Form Number: NOAA Form 88-120; OMB—0648-0089

Type of Request: Request for extension of OMB approval of a currently cleared collection

Burden: 500 respondents; 347 reporting hours; average hours per response—.7 hours

Needs and Uses: Vessels of foreign nations with fishing agreements with the U.S. must submit annual applications for fishing permits. The information provided in the application is used to determine if the vessel should receive a permit and to identify those vessels being permitted

Affected Public: Business or other for profit

Frequency: Annual

Respondent's Obligation: Required to maintain or obtain a benefit

OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 30, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-15920 Filed 7-6-89; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held July 26, 1989, at 10:30 a.m., in the Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed. The meeting is called on short notice because of COCOM deliberations which have just recently been scheduled.

Agenda

General Session

1. Opening Remarks by the Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Comparison of MCTL List and COCOM List.
5. Goals and Objectives of the Committee.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited

number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Date: June 28, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 89–15921 Filed 7–6–89; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Endangered Species; Issuance of Permit; State of Connecticut, Department of Environmental Protection (P430)

On December 2, 1988, Notice was published in the **Federal Register** (53 FR 48679) that an application had been filed with the National Marine Fisheries Service by the State of Connecticut, Department of Environmental Protection, Fisheries Bureau, Marine Fisheries Office, P.O. Box 248, Waterford, Connecticut 06385, for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for scientific purposes.

Notice is hereby given that on June 28, 1989, and as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1407), the National Marine Fisheries Service issued a Scientific Purposes Permit for the above taking to the State of Connecticut, Department of Environmental Protection subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act.

The Permit is available for review in the following Offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910; and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: June 28, 1989.

[FR Doc. 89–15936 Filed 7–6–89; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Government-Owned Inventions; Availability of Licensing

June 26, 1989.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information and copies of patent applications bearing serial numbers with prefix E may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All other patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487–4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 7–189,037 Cockroach Growth Regulating Composition and Method

SN 7–323,729 Avian Lymphokines Protective Against Coccidiosis

SN 7–332,901 Apparatus and Process for Detection of Insect Infestation in an Agricultural Commodity

SN 7–334,069 Antibodies to Cytokinins Having a Glycosylated Isoprenoid Side Chain and Immunoassay Methods

Department of Commerce

SN 7–262,763 Apparatus for Sterilizing Objects

Department of Health and Human Services

SN 6–217,143 (4,321,915) Everting Tube Device with Relative Advance Control

SN 6–903,723 (4,831,175) Backbone Polysubstituted Chelates for Forming a Metal Chelate-Protein Conjudgate

SN 7–165,302 Novel Interleukin 2 Receptor and Applications Thereof

SN 7–284,368 Human Liver Epithelial Cell Line

SN 7–304,853 Cross-Axis Synchronous Flow Through Coil Planet Centrifuge for Large-Scale Preparative Countercurrent Chromatography

SN 7–311,217 A Clone of Double-Stranded RNA Virus and Applications Thereof

SN 7–312,097 Hybridomas and Resulting Monoclonal Antibodies Directed Against Antigens of Bordetella Pertussis

SN 7–316,958 Stabilized Nitric Oxide—Primary Amine Complexes Useful as Cardiovascular Agents

SN 7–322,266 Computer-Assisted Design of Anti-Peptides Based on the Amino Acid Sequence of a Target Peptide

SN 7–331,212 Characterization of a Replication Competent Human Immunodeficiency Type 2 Proviral Clone

SN 7–340,073 Novel Oligodeoxynucleotides with 5′-Linked Chemical Groups, Methods of Production Thereof and Use Thereof

SN 7–340,443 Process for Removing C-Reactive Protein and Anti-

Phosphorycholine Antibodies from Biological Fluids
SN 7–341,949 Elisa Methods for the Determination of Human Platelet Derived Growth Factor (PDGF) Dimer Forms Present in Human Tissues and Fluids
SN 7–344,304 Novel Recombinant Proteins Containing Human CD4 Sequences Linked to Immunoglobulin Constant Regions
SN 7–351,448 Selectively Cytotoxic Fusion Protein
SN 7–355,207 RNA Probe for Detecting c-fes mRNA
SN 7–356,999 Cloned Endothelial Cells of Endocrine Origin
SN E–168–89 A Sensitive Diagnostic Test for Lyme Disease

Department of the Army

SN 7–335,632 Method of Creating a Large Magnetic Field in a Hollow Cylindrical Superconducting Ring
SN 7–345,045 Field Adjustable Transverse Flux Sources

Department of the Interior

SN 6–480,793 (4,537,133) Non-Incendive Rock-Breaking Explosive Charge

[FR Doc. 89–15957 Filed 7–6–89; 8:45 am]
BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTAICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review a revision of a currently approved information collection requirement concerning Special Tooling.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523–3775.

SUPPLEMENTARY INFORMATION: a. *Purpose:* FAR Section 45.306 and the clause at 52.245–17, Special Tooling, contain policy and contractual language on furnishing special tooling to contractors or allowing contractors to acquire special tooling of fixed-price contracts. The clause requires contractors to maintain and report certain identification and use information on special tooling.

The information collection requirements contained in this FAR amendment were initially approved by the Office of Management and Budget (OMB) when the amendment was issued as a proposed rule under OMB Control Number 9000–0075. However, those estimates underestimated the usage requirement of DOD concerning special tooling. In addition, the final rule has consolidated the initial and updated listing requirements. Therefore, a revised Paperwork Reduction Act Analysis depicting a more realistic estimate of burden impact has been submitted to OMB for review. This identification and use information is used by the contractor in performing its contract and then it is used by the Government buying offices and logistics offices to determine whether any of the special tooling can be used by the Government or contractors subsequent to its use during production by the acquiring contractor. In addition, the information enables the Government to direct retention or disposition of the special tooling following its use in major systems, components, and parts.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *10,000;* average responses per respondent, *2;* total annual responses, *20,000;* preparation hours per response, *1;* and total response burden hours, *20,000.*

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, *10,000;* annual hours per recordkeeper, *40;* and total recordkeeping burden hours, *400,000.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telepohone (202) 523–4755. Please cite OMB Control No. 9000–0075, Special Tooling.

Dated: June 28, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–15958 Filed 7–6–89; 8:45 am]
BILLING CODE 6820–JC–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number. Application for a Department of the Army Permit; ENG Form 4345; OMB Control Number 0702–0036.

Type of Request: Extension.

Average Burden Hours Minutes Per Response: 5 hrs.

Frequency of Response: On Occasion.

Number of Respondents: 15,500.

Annual Burden Hours: 77,500.

Annual Responses: 15,500.

Needs and Uses: The Application for a Department of the Army Permit is used to regulate the alteration and quality of U.S. waters. The public submits the application to obtain permission to undertake construction related activities that would affect navigation channels and other U.S. waters.

Affected Public: Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Nonprofit institutions; and Small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1989.

[FR Doc. 89–16010 Filed 7–6–89; 8:45 am]
BILLING CODE 3810–01–M

Office of the Secretary

Advisory Committee on Uncompensated Overtime; Meeting

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the provisions of Pub. L. 92–463 (Federal Advisory Committee Act), notice is hereby given that a meeting of the Department of Defense Advisory Committee on Uncompensated Overtime is scheduled to be held on July 28, 1989, from 1:00 pm to 4:00 pm, at the U.S. Chamber of Commerce, Herman Lay Room, 1615 H Street, NW, Washington, DC. This is the fourth meeting of the advisory committee. The meeting is open to the public.

The Department of Defense Advisory Committee on Uncompensated Overtime was established pursuant to section 804 of Pub. L. 100–456 (FY89 National Defense Authorization Act). The advisory committee is responsible for: (1) Developing criteria to ensure that proposals for contracts for professional and technical services are evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees, and (2) making recommendations to the Secretary of Defense on the criteria to be adopted by the Secretary. In developing the recommendations, the advisory committee shall address the following issues: (A) How the Department of Defense can best be assured that it receives the best quality services for the amounts expended and that the contractors supplying such services follow sound personnel management practices and observe established labor-management policies and regulations; (B) Whether contract competitions should be structured in a manner that requires offerors to compete on the basis of factors other than the number of hours per week its professional and technical employees of similar annual salaries work; and (C) Whether the Department of Defense can allow contractors to maintain different accounting systems (for example, 40-hour work week, full time accounting) and still allow the Department to evaluate proposals on the basis of a work rate of 40 hours per week and 2,080 hours per year.

FOR FURTHER INFORMATION: Persons desiring additional information or planning to attend the meeting should contact Mr. Ted Godlewski, Action Officer, Office of the Deputy Assistant Secretary of Defense for Procurement, Directorate of Cost, Pricing and Finance, The Pentagon—Room 3C800, Washington, DC 20301–1900, telephone (202) 695–7249, not later than July 25, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1989.

[FR Doc. 89–16011 Filed 7–6–89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Brilliant Pebbles; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Brilliant Pebbles will meet in closed session on July 25, 1989 at the Naval Ocean Systems Center, San Diego, California, and August 22–23 and September 19–20, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will discuss classified technical and programmatic details associated with the Brilliant Pebbles space-based interceptor concept including technical maturity, potential military effectiveness, and cost and schedule risk associated with the development, testing and possible deployment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1989.

[FR Doc. 89–16004 Filed 7–6–89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Brilliant Pebbles; Meeting Cancelled

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Brilliant Pebbles scheduled for June 16–17 at the Pentagon, Arlington, Virginia, and June 27–28, 1989 at Lawrence Livermore Laboratory, California as published in the **Federal Register** (Vol. 54, No. 93, Page 21092–21093, Tuesday, May 16, 1989, FR Doc. 89–11637) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1989.

[FR Doc. 89–16003 Filed 7–6–89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations

AGENCY: Change in location of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations scheduled for July 19, 1989 at the Hughes Corporation, Rosslyn, Virginia as published in the **Federal Register** (Vol. 54, No. 113, Page 25318–25319, Wednesday, June 14, 1989, FR Doc. 89–14071) will be held at the Institute for Defense Analyses, Alexandria, Virginia.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1989.

[FR Doc. 89–16005 Filed 7–6–89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Procurement With a Global Technology Base; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Procurement with a Global Technology Base will meet in closed session on September 14, 1989 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will address the management, technology transfer, and program acquisition issues associated with balancing national security and international trade in the mutual interests of the DoD and the defense industrial base.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C.

App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1989.

[FR Doc. 89–16006 Filed 7–6–89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on International Research and Development will meet on July 17 and 18, 1989. The meeting will be held at the General Dynamics Corporation, 1525 Wilson Blvd., Rosslyn, Virginia. The meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on July 17 and 18, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to ongoing international research and development programs. The agenda will include briefings and discussions related to program objectives, and government, industry and foreign perspectives. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4488.

Date: June 30, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–15913 Filed 7–6–89; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Tactical Defense Suppression in the Year 2000 will meet on July 19 and 20, 1989. The meeting will be held at the Naval Strike Warfare Center, Fallon, Nevada. The meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on July 19 and 20, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to naval aviation's ability to conduct lethal defense suppression missions in the year 2000. The agenda will include briefings and discussions related to program objectives, current concepts of defense suppression tactics, weapons technology, and industry perspectives. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4488.

Date: June 30, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaision Officer.

[FR Doc. 89–15914 Filed 7–6–89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/JA(EU)-47, for the transfer from the Federal Republic of Germany to Japan of 6,060 grams of uranium, enriched to 19.75 percent in the isotope uranium-235, 5,050 grams of uranium, enriched to 10.2 percent in the isotope uranium-235, and 10,100 grams of uranium, enriched to 8.2 percent in the isotope uranium-235, for use in fabrication of fuel elements and coated particles for irradiation testing.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: July 3, 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89–16015 Filed 7–6–89; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section

3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585 (202) 586–2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–550.
3. 1902–0089.
4. Oil Pipeline Rates: Tariff Filings.
5. Extension.
6. On occasion.
7. Mandatory.
8. Business or other for-profit.
9. 140 respondents.
10. 325 responses.
11. 20 hours per response.
12. 6,500 hours (total).
13. The purpose of this tariff filing requirement is to provide data used by the Commission to establish just and reasonable rates that may be charged by jurisdictional oil pipeline companies.

Statutory Authority: Sections 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, June 30, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–16017 Filed 7–6–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. TA89–1–31–002 and TQ89–3–31–001]

Filing of Revised Tariff Sheets Reflecting Tariff Adjustment and Take-or-Pay Recovery

June 30, 1989.

Take notice that on June 23, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing certain tariff sheets.

AER states that its revised tariff sheets reflect corrections of clerical errors in the tariff sheets filed in its PGAs effective April 1, 1989 and July 1, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before July 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–15932 Filed 7–6–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 89–31–NG]

First Energy Associates, a Limited Partnership; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 19, 1989, of an application filed by First Energy Associates, A Limited Partnership (FEA), for authorization to import up to 13,000 Mcf per day and a total of 71,227,000 Mcf of natural gas from Canada over a term of 15 years. The gas would be purchased form Western Gas Marketing Limited, an Alberta corporation (WGML), to fuel FEA's new combined cycle cogeneration facility to be built in Orange, Connecticut. Commercial operation of the facility is expected to begin in 1991. Under FEA's proposed gas purchase agreement with WGML, delivery of the gas would begin on the first day of the test phase of the cogeneration facility which also would initiate the term of the requested import authorization.

The gas will enter the United States at the international border near Waddington, New York, where the pipeline facilities of TransCanada PipeLines Limited (TCPL) and the proposed Iroquois Gas Transmission System (Iroquois) interconnect, and then would be transported through Iroquois to FEA. Iroquois has an application pending before the Federal Energy Regulatory Commission (FERC) to construct its new pipeline and provide transportation for the imported volumes.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed no later than August 7, 1989.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–4819

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: FEA is a New Hampshire partnership consisting of Merrimack Valley Power Generation Corporation, as general partner, and various individuals as limited partners. The proposed cogeneration facility was certified by the Federal Energy Regulatory Commission (FERC) in FERC Docket No. QF87–412–000 as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 (PURPA). On June 8, 1989, FEA filed with the DOE a Certification of Compliance with the coal capability requirement for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978, as amended. The electricity produced by the cogeneration facility would be sold to Consolidated Edison Company of New York, Inc. (Con Edison). Thermal energy recovered from the facility would be used by Miles Pharmaceuticals Division of Miles Laboratories, Inc.

In accordance with a precedent agreement dated May 1, 1989, FEA and WGML, the marketing subsidiary of TCPL, will execute a gas purchase agreement when all governmental authorizations have been obtained and all conditions relating to the completion of the required new facilities have been met. Under the provisions of the draft gas purchase agreement furnished with its application, FEA would pay WGML a two-part border price comprised of a demand charge and a commodity charge. The base price of the gas would be indexed to the fuel adjustment provision of Con Edison's SC–21 tariff for buy-back service and Con Edison's Industrial Gas Tariff, both as approved by the New York Public Service Commission. FEA states that the initial border price at 100 percent load factor (Initial Base Price) would be $2.75 per Mcf based on the Con Edison indices for the month of March 1989. The price will be adjusted monthly based on changes in the indices. The total cost of gas delivered to FEA's cogeneration facility would include charges incurred for pipeline transmission from the international border.

The monthly demand charge under the proposed contract between FEA and WGML would be the product of the average of the daily contract quantities on each day of the relevant month (excluding quantities delivered to the new cogeneration facility during its test phase) and the monthly demand rate. The monthly demand rate would be the sum of (a) the monthly demand toll per Mcf for the firm transportation of gas on TCPL's system from the Alberta-Saskatchewan border to the point of delivery on the international border; (b) the average monthly demand toll equivalent per Mcf as billed by Nova to WGML for transportation of the gas to the Alberta border during the previous year; and (c) a current supply reservation fee of $4.563 per Mcf per month which is the equivalent of the average monthly demand toll per MMBtu as billed by WGML in the preceding contract year.

The commodity charge would be equal to the adjusted base price (ABP) less the product of the monthly demand charge rate per Mcf calculated as described above and converted to a charge per MMBtu based on an average monthly heating value of the gas transported to the point of delivery, and 12, divided by 265. The ABP for each delivery month would be adjusted in accordance with a formula stated as $ABP = 2.75 \times AFC$. AFC (adjusted fuel cost) for any month is calculated by the following formula:

$$AFC = \frac{CEAFC}{CEAFC1} \times 0.5 + \frac{CEGC}{CEGC1} \times 0.5$$

Where:

CEAFC (Con Edison Average Fuel Cost) is equal to the sum of the values included under the headings "Base Cost of Fuel per Kilowatt Hour" and the "Rate Adjustment per Kilowatt Hour For All Bills Rendered Monthly" published during the month preceding the delivery month in the statement of Fuel Adjustment filed for Con Edison with the New York State Public Service Commission under the heading "Applicable to All Service Classifications Except for 25-Cycle Service"; and CEAFC1 is equal to 2.6328 cents per kilowatt hour: And CEGC (Con Edison Gas Cost) is equal to Con Edison's Retail Natural Gas Price during the month preceding the delivery month of Commercial and Industrial Firm Gas service of 100,000 Mcf per month as set forth in the Monthly Energy Price Report published by the New York State Energy Office; and CEGC1 is equal to $5.5400 per Mcf.

Either FEA or WGML may require renegotiation of the pricing terms of the contract during the contract years commencing November 1, 1993, November 1, 1998, and November 1, 2003. In the event there is no agreement on such pricing terms, either party has the right to refer the matter to arbitration.

If FEA's gas purchases from WGML fall below 75 percent of the aggregate of the maximum daily quantities in a contract year (13,000 × 365 days), FEA must pay a deficiency charge levied on the volumes not taken below the minimum quantity, equal to the average of the commodity charges in effect during the year. In addition, the amount which WGML is obligated to supply is subject to reduction if FEA takes less tha minimum contract volumes.

In support of its application, FEA states that the import arrangement is competitive and would remain so over the term of the authorization. FEA asserts that this import would be secure because WGML has under contract with producers in the Province of Alberta sufficient quantities of gas to meet all of its supply commitments, including the volumes to be purchased by FEA. In addition, FEA asserts that any curtailment of WGML commitments to this project would occur "only if all other WGML exports are curtailed and then only on a pro rata basis." According to FEA, current estimates place Alberta reserves from conventional producing areas at 65.3 Tcf and potential marketable reserves at 150 Tcf. By contrast, FEA states that at full deliveries under its proposed purchase contract with WGML the total quantity would be 0.07 Tcf.

The decision on FEA's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684). Other matters that may be considered in making a public interest determination include need for gas, security of the long-term supply, and any relevant issues that may be unique to cogeneration facilities. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is competitive and its gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC, in Docket No. CP89–634–000 encompassing the Iroquois pipeline project, is currently performing an environmental review of the impacts of constructing and operating the proposed facilities through which Iroquois would transport the import before making its decision on the certificate application. The DOE will participate in the environmental review process at the appropriate level. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities regarding the FEA application.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., August 7, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a conditional or final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of FEA's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m.and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 29, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89–16016 Filed 7–6–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of June 2 Through June 9, 1989

During the week of June 2 through June 9, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 29, 1989.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 2 through June 9, 1989]

Date	Name and location of applicant	Case No.	Type of submission
June 8, 1989	Plaquemines/Buras Fuel Dock, Hardin, KY	RR305–4	Modification/rescission in the Plaquemines refund proceeding. If granted: The May 11, 1989 Decision and Order (Case No. RR305–3) issued to Buras Fuel Dock would be modified regarding the firm's application for refund submitted in the Plaquesmines refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of June 2 through June 9, 1989]

Date received	Name of refund application	Case No.
Feb. 9, 1989	Arrowhead Blacktop Company	RF309–1360
Do	The Best Gas & Oil Company	RF309–1359
June 1, 1989	Parkway Gulf Service	RF300–10826
June 2, 1989 thru June 9, 1989.	Crude Oil Refund; applications received	RF272–75499 thru RF272–75507
Do	Atlantic Richfield Refund; applications received	RF304–9406 thru RF304–9423
Do	Exxon Refund; applications received	RF307 3966 thru RF307–9979

REFUND APPLICATIONS RECEIVED—Continued

[Week of June 2 through June 9, 1989]

Date received	Name of refund application	Case No.
Do	Shell Refund; applications received	RF315-6067 thru RF315-6109
June 5, 1989	Michel's Oil & Gas Company	RF308-11
Do	Nelson Oil Company	RF300-10825
June 7, 1989	Houston Oil Company	RF300-10827
Do	Merritt Park Service	RF264-19
Do	Lorentz Gas Company	RF308-12

[FR Doc. 89-16018 Filed 7-6-89; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order During the Period of June 12 Through June 23, 1989

During the period of June 12 through June 23, 1989, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 29, 1989.

Range Oil Company, Inc., Wichita, Kansas, Case No. KEE-0170

The Range Oil Company filed an Application for Exception from the requirement to complete and file Form EIA-23. The exception request, if granted, would excuse Range Oil Company from its responsibility to file the form. On March 20, 1989, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 89-16019 Filed 7-6-89; 8:45 am]
BILLING CODE 6450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $862,500 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Tri-Service Drilling Company. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case number KEF-0135.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585 (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282 (b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute funds obtained from Tri-Service Drilling Company (Tri-Service). The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the Federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption to petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room

1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: June 30, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

(Proposed) Implementation of Special Refund Procedures

Name of Firm: Tri-Service Drilling Company
Date of Filing: May 15, 1989
Case Number: KEF-0135

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Proedures for crude oil overcharge funds obtained from Tri-Service Drilling Company (Tri-Service). This firm remitted $862,500.00 to the DOE pursuant to a March 24, 1989 Consent Order between Tri-Service and the DOE. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement,* 9 DOE ¶ 82,508 (1981), and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from Tri-Service, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation,* M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of Federl crude oil price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of crude oil overcharge monies that were in the DOE's escrow account at the time of the M.D.L. 378 settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g., Shell Oil Co.,* 17 DOE ¶ 85,204 (1988) (*Shell Oil*), *Ernest A. Allerkamp,* 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with the Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, the Court issued an Opinion and Order denying the States' Motion in its entirety. The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation,* 671 F. Supp. 1318, 1323 (D. Kan. 1987). The Court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. The latter ruling was affirmed by the Temporary Emergency Court of Appeals. *In Re: The Department of Energy Stripper Well Exemption Litigation,* 857 F.2d 1481 (Temp. Emer. Ct. App. 1988).

II. Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceeding that is the subject of the present determination. As noted above, and $862,500 alleged crude oil violation amount is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amount, or $172,500 (plus interest), for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See Mountain Fuel Supply Co.,* 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations, are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond proof of the volumes of product purchased during the period of crude oil price controls. *See A. Tarricone, Inc.,* 15 DOE ¶ 85,495 at 88,893-96 (1987). The end-user presumption of injury can be rebutted if evidence shows that the specific end-user in question was not injured by the crude oil overcharges. Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Exemption Litigation Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *See Mid-America Dairymen, Inc. v. Herrington,* Fed. Energy Guidelines ¶ 26,617 (Temp. Emer. Ct. App. 1989); *accord, Boise Cascade Corp.,* 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amount involved in this determination ($862,500.00) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *See Mountain Fuel,* 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.*

* The Department of Energy established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through

Continued

This yields a volumetric refund amount of $0.00000042677 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. A deadline of June 30, 1988, was established for all first stage crude oil refund proceedings implemented pursuant to the MSRP up to and including *Shell Oil. See A. Tarricone, Inc.*, 16 DOE at 89,339; *Allerkamp*, 17 DOE at 88,178; *Shell Oil*, 17 DOE at 88,408. Any applicant that files a refund application after that deadline will be eligible to receive a refund based only on the volumetric amounts approved subsequent to that date in the second stage of disbursements. The volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register.**

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $690,000 plus interest, be disbursed in equal shares to the states and Federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Exemption Litigation Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register.**

It Is Therefore Ordered That: The refund amount remitted to the Department of Energy by Tri-Services Drilling Company pursuant to the Consent Order executed on March 24, 1989, will be distributed in accordance with the foregoing Decision.

[FR Doc. 89-16020 Filed 7-6-89; 8:45 am]

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the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See Amber Refining Inc.*, 13 DOE ¶ 85,217 at 88,564 (1985).

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3612-5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed June 26, 1989 Through June 30, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890175, Final, FHW, MD, MD-228 Extension, US 301 to MD-210 and MD-210 Improvement, MD-228 Exended to Old Fort Road, Funding, Charles and Prince Georges Counties, MD, Due: August 7, 1989, Contact: Herman Rodrigo (301) 962-4132.

EIS No. 890176, Draft, AFS, WY, Threemile Area Timber Sale and Road Construction, Medicine Bow National Forest Land and Resource Management Plan, Medicine Bow National Forest, Carbon County, WY, Due: September 1, 1989, Contact: Gary Rorvig (307) 745-8971.

EIS No. 890177, Draft, BLM, UT, USPCI Clive Tranfer/Storage/Incineration Facility and Associated Transportation/Utility Corridors, Construction and Operation, Right-of-Ways and/or Land Exchange, Tooele County, UT, Due: September 5, 1989, Contact: Dennis Oaks (801) 524-5348.

EIS No. 890178, Draft, AFS, WA, White Pass Ski Area Expansion, Special Use Permit, Wenatchee and Gifford Pinchot National Forests, Lewis and Yakima Counties, WA, Due: August 31, 1989, Contact: Phillip Glass (509) 662-4332.

EIS No. 890179, FSuppl, USA, PAC, TT, Johnston Atoll Chemical Agent Disposal System (JACADS) of Generated Liquid and Solid Waste, Additional Information, Special Use Permit, Pacific Ocean Trust Territory, Due: August 7, 1989, Contact: James Maragos (808) 438-2263.

EIS No. 890180, Final, FHW, TX, US 67 Bypass Construction, Near FM-1434 to Near Spur 102, Cleburne, Funding, Johnson County, TX, Due: August 6, 1989, Contact: William Hall (512) 482-5988.

EIS No. 890181, Draft, UAF, MA, OTIS Air National Guard Base Wastewater Treatment Facility, Continuing Operation, Barnstable County, MA, Due: August 21, 1989, Contact: Leroy Barnstable (301) 981-2464.

Amended Notices

EIS No. 890149, Final, SFW, MA, RI, CT, NH, VT, ME, New England Atlantic Salmon Restoration Activities 1989-2021, Implementation, Connecticut, Pawcatuck, Merrimack, Saco, Union, Androscoggin, Kennebec, Penobscot, St. Croix, Meduxnekeag and Aroostook Rivers, CT, RI, MA, NH, VT and ME, Due: August 15, 1989, Contact: Dan Kimball (617) 965-5100. Published FR 6-23-89—Review period reestablished.

EIS No. 890162, Draft, AFS, PA, Allegheny Reservoir Motel-Restaurant Complex, Site Selection and Construction, Allegheny National Forest, Warren County, PA, Due: August 14, 1989, Contact: David Wright (814) 723-5150. Published FR 6-23-89—Review period reestablished.

Dated: July 3, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-16027 Filed 7-6-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3612-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 19, 1989 through June 23, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-L65019-OR, Rating LO, Tepee Butte Fire Recovery Project, Implementation, August thru September 1988 Tepee Butte Fire Damage Recovery Land Management Plan, Hells Canyon National Recreation Area, Wallowa-Whitman National Forest, Wallowa County, OR.

Summary: EPA has no objections to the projects as described in the draft EIS. However, a fully developed monitoring plan for water quality and fish needs to be prepared and included in the final EIS.

ERP No. D-BOP-C81012-PR, Rating EC2, Guaynabo Metropolitan Detention Center, Construction and Operation, Implementation, PR.

Summary: EPA has concerns about the construction of the Metropolitan Detention Center because information

regarding sewage treatment plant capacity, availability of adequate water, and the adequacy of the drainage system is lacking in the draft EIS. EPA has requested that the final EIS discuss these issues in more detail.

ERP No. D-FHW-D40241-VA, Rating EO2, VA-17 Bypass Extension, VA-17/29 Business to VA-17 northwest of Warrenton, Construction, Funding and COE General Permit, Town of Warrenton, Fauquier County, VA.

Summary: EPA rated Alternatives B and C EO-2, because of the potential adverse impacts to wetlands, wildlife habitat, surface and groundwater, and historical sites. Alternatives A and D were rated EC-2. Alternative A has a good level of service. Alternative D is preferred from an environmental standpoint, but has a poor predicted level of service. EPA recommended that the environmental concerns be addressed in the final EIS.

ERP No. D-USA-A11067-UT, Rating EC2, Tooele Army Depot On-Site Facility for Disposal of Stockpiled Chemical Agents and Munitions, Construction and Operations, Tooele County, UT.

Summary: EPA did not identify any major concerns, however EPA recommended a number of improvements, clarifications, and suggestions concerning the project.

Final EISs

ERP No. F-FHW-G40122-LA, Old Metairie Railroad Project, Railroad and Traffic Flow Conflicts Alleviation, Orleans Parish and Jefferson Parish Line to the Airline Highway and Causeway Boulevard Intersection, Funding, Jefferson Parish, LA.

Summary: EPA expresses no objections to the proposed alternative as described in the final EIS.

Regulations

ERP No. R-COE-A35052-00, 33 CFR Part 326; Proposal to Amend Permit Regulations for Controlling Certain Activities in Waters of the United States (54 FR 20608).

Summary: EPA has few concerns because of the consultations during development of the proposed regulation governing administrative penalties for violation of permits issued pursuant to section 404 of the Clean Water Act. EPA was concerned that the Corps maintain its ability to commence suit after proceeding with an administrative penalty; the respondent be able to provide both oral and written testimony; and the respondent be subject to the same privileges and responsbilities of other witnesses.

Dated: July 3, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-16028 Filed 7-6-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 30, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0062

Title: Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Station(s)

Form Number: FCC 330

Action: Extension

Respondents: Non-profit institutions

Frequency of Response: On occasion

Estimated Annual Burden: 163 Responses; 1,113 Hours

Needs and Uses: FCC Form 330 is required when applying for authority to construct or make changes in Instructional Television Fixed or Response Stations and Low Power Relay Stations. Data is used by FCC staff to determine if applicant is qualified and meets basic statutory requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-15986 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 30, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

Please note: The Commission has requested expedited review of these items by July 28, 1989, under the provisions of 5 CFR 1320.18.

OMB Number: None

Title: Section 73.3523, Dismissal of applications in renewal proceedings

Action: New collection

Respondents: Businesses (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 70 responses; 168 hours; 2.4 hours average burden per respondent

Needs and Uses: Section73.3523 requires an applicant for a construction permit to obtain approval from the FCC to dismiss or withdraw its application when the application is mutually exclusive with a renewal application. The data is used by the FCC staff to ensure that an application was filed under appropriate circumstances and not to extract payment in excess of legitimate and prudent expenses.

Note: The text of 47 CFR 73.3523 (Dismissal of applications in renewal proceedings) may be found in the May 25, 1989, issue of the **Federal Register** on page 22598 (54 FR 22598).

OMB Number: None

Title: Section 73.3524, Dismissal of petitions to deny in renewal proceedings

Action: New collection

Respondents: Businesses (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 40 responses; 60 hours; 1.5 hours average burden per respondent

Needs and Uses: Section 73.3524 requires a petitioner to deny to obtain approval from the FCC to dismiss or withdraw its petition when it is filed against a renewal application. The data is used by FCC staff to ensure that a petition to deny or citizens agreement was filed under appropriate circumstances and not to extract payment in excess of legitimate and prudent expenses.

Note: The text of 47 CFR 73.3524 (Dismissal of petitions to deny in renewal proceedings) may be found in the May 25, 1989, issue of the **Federal Register** on pages 22598–99 (54 FR 22598–99).

OMB Number: None

Title: BC Docket No. 81–742, Amendments to pre-hearing designation applications in renewal proceedings

Action: New collection

Respondents: Businesses (including small businesses)

Frequency of Response: One-time filing requirement

Estimated Annual Burden: 34 responses; 2,720 hours; 80 hours average burden per respondent

Needs and Uses: All applicants in comparative renewal proceedings whose pending applications are in a pre-hearing designation status and who have relied upon the availability of the incumbent's transmitter site in their applications must amend their applications to show reasonable assurance of site availability and, if necessary, amend the engineering data submitted.

Note: The requirement for the above collection of information (BC Docket No. 81–742, Amendments to pre-hearing designation applications in renewal proceedings) may be found in the May 25, 1989, issue of the **Federal Register** in paragraphs 19 and 20 on page 22597 (54 FR 22597).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–15987 Filed 7–6–89; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for three new FM stations:

I.

Applicant, City and State	File No.	MM Docket No.
A. Opal Carrol Coley, Orange Beach, AL.	BPH–871201MC	80–292
B. Mark Allen Bodiford, Orange Beach, AL.	BPH–871203MA	.....
C. Pleasure Island Broadcasting, Inc., Orange Beach, AL.	BPH–871203MO	.....
D. Quaz Communications, Inc., Orange Beach, AL.	BPH–871203MR	.....
E. Gulf Shore Radio Limited Partnership, Orange Beach, AL.	BPH–871203MV	.....
F. Betty P. Barnhill d/b/a RNG Communications, Orange Beach, AL.	BPH–871203MX	.....
G. J. McCarthy Miller, Orange Beach, AL.	BPH–871203NM	.....
H. Coastal Alabama Broadcast Associates, Orange Beach, AL.	BPH–871203NO	.....
I. Pete Wolff, III, Orange Beach, AL.	BPH–871203NW	.....

Issue Heading	Applicants
1. See Appendix	E
2. See Appendix	E
3. See Appendix	E
4. See Appendix	E
5. Air Hazard	E
6. Comparative	A–I
7. Ultimate	A–I

II.

Applicant, City and State	File No.	MM Docket No.
A. Margaret Escriva, Topeka, KS.	BPH–871124MG	89–293
B. American Indian Broadcast Group, Inc., Topeka, KS.	BPH–871124MM	.....
C. Plains FM Limited Partnership, Topeka, KS.	BPH–871124MP	.....
D. Spacecom, Inc., Topeka, KS.	BPH–871124MW	.....

Issue Heading	Applicants
1(a). See Appendix	B
1(b). See Appendix	B
2. See Appendix	C
3. See Appendix	C
4. See Appendix	C
5. See Appendix	C
6. Air Hazard	B, C
7. Comparative	A–D
8. Ultimate	A–D

III.

Applicant, City and State	File No.	MM Docket No.
A. Christian FM Application Partnership, Marion, KY.	BPH–8703130A	89–294

Issue Heading	Applicants
1. See Appendix	A
2. See Appendix	A
3. See Appendix	A

IV.

Applicant, City and State	File No.	MM Docket No.
A. Midland Educational Broadcasting Foundations, Midland, TX.	BPED–831121AI	89–291
B. Radio Ministries, Midland, TX.	BPED–8407311G	.....

Issue Heading	Applicants
1. Air Hazard	A
2. Comparative Noncommercial	A, B
3. Ultimate	A. B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to tha particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay, Assistant Chief,

Audio Services Division, Mass Media Bureau.

Appendix I—Orange Beach, Alabama

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (Gulf Shore).

2. To determine whether E's (Gulf Shore's) organizational structure is a sham.

3. To determine whether E (Gulf Shore) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to timely report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending.

4. To determine, from the evidence adduced pursuant to Issues 1 through 3 above, whether E (Gulf Shore) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix II—Topeka, Kansas

1. To determine: (a) whether B's (American Indian's) filing of the instant application constitutes a violation of the Commission's multiple ownership rules, 47 CFR 73.3555; and (b) if so, whether the filing of B's (American Indian's) application constitutes a violation of the Commission's inconsistent application rule, 47 CFR 73.3518 which, if so, would warrant dismissal of the application.

2. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of C (Plains).

3. To determine whether C's (Plains') organizational structure is a sham.

4. To determine whether C (Plains) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending.

5. To determine, from the evidence adduced pursuant to Issues 2 through 4 above, whether C (Plains) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix III—Marion, Kentucky

1. To determine whether Sonrise Management Services, Inc. is an undisclosed real party-in-interest to the application of A (Christian FM).

2. To determine whether A's (Christian FM) organizational structure is a sham.

3. To determine, based on the evidence adduced pursuant to issues 1 and 2 above, whether A (Christian FM) possesses the basic qualifications to be a Commission licensee.

[FR Doc. 89-15988 Filed 7-6-89; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: This submission is summarized as follows:

Type of Review: Extension of the expiration date without any change in the substance or in the method of collection.

Title: Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).

Form Number: Not applicable.

OMB Number: 3064-0085.

Expiration Date of Current OMB Clearance: September 30, 1989.

Frequency of Response: On occasion.

Respondents: Insured nonmember banks.

Number of Respondents: 8,400.

Average Number of Hours per Respondent: 37.6.

Total Annual Burden Hours: 316,122.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before September.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC contact would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the expiration date of the collection of information required by Regulation B (12 CFR 202) as issued by the Board of Governors of the Federal Reserve System under the authority of title VII of the Consumer Credit Protection Act (15 U.S.C. 1691). Section 703 of the Act (15 U.S.C. 1691b) designates the FRB as the issuer of the implementing regulations, and section 704(a) of the Act (15 U.S.C. 1691c) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks. This information collection is mandatory (15 U.S.C. 1691) and is not given confidential treatment.

Regulation B prohibits creditors from discriminating against credit applicants on any of the bases specified by the Equal Credit Opportunity Act, establishes guidelines for gathering and evaluating credit information and requires creditors to give applicants a written notification of rejection of an application.

Dated: June 30, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-16008 Filed 7-6-89; 8:45 am]
BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: This submission is summarized as follows:

Type of Review: Extension of the expiration date without any change in the substance or in the method of collection.

Title: Recordkeeping and Disclosure Requirements in Connection with Regulation E (Electronic Fund Transfers).

Form Number: Not applicable.

OMB Number: 3064-0084.

Expiration Date of Current OMB Clearance: September 30, 1989.

Frequency of Response: On occasion.

Respondents: Insured nonmember banks.

Number of Respondents: 8,400.

Average Number of Hours Per Respondent: 72.9.

Total Annual Burden Hours: 612,767.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before September 5, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC contact would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the expiration date of the collection of information required by Regulation E (12 CFR 205) as issued by the Board of Governors of the Federal Reserve System under the authority of title IX of the Consumer Credit Protection Act (15 U.S.C. 1693). Section 904 of the Act (15 U.S.C. 1693b) designates the FRB as the issuer of the implementing regulations, and section 917(a) of the Act (15 U.S.C. 1693o) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks. This information collection is mandatory (15 U.S.C. 1693) and is not given confidential treatment.

Regulation E establishes the rights, liabilities, and responsibilities of parties in electronic fund transfers and protects consumers using EFT systems.

Dated: June 30, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-16009 Filed 7-6-89; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB For Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Extension of the expiration date without any change in the substance or in the method of collection.

Title: Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing).

Form Number: Not applicable.

OMB Number: 3064-0083.

Expiration Date of Current OMB Clearance: September 30, 1989.

Frequency of Response: On occasion.

Respondents: Insured nonmember banks.

Number of Respondents: 8,400.

Average Number of Hours Per Respondent: 3.9.

Total Annual Burden Hours: 32,984.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before September 5,1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC contact would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the expiration date of the collection of information required by Regulation M (12 CFR Part 213) as issued by the Board of Governors of the Federal Reserve System under the authority of title I of the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). Section 105 of the Act (15 U.S.C. 1604) designates the FRB as the issuer of the implementing regulations, and section 108(a) of the Act (15 U.S.C. 1607) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks. This information collection is mandatory (15 U.S.C. 1667) and is not given confidential treatment.

Regulation M implements the consumer leasing provisions of the Truth in Lending Act.

Dated: June 30, 1989.

Federal Deposit Insurance Corporation,

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-16012 Filed 7-6-89; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Extension of the expiration date without any change in the substance or in the method of collection.

Title: Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending).

Form Number: Not applicable.

OMB Number: 3064-0082.

Expiration Date of Current OMB Clearance: September 30, 1989.

Frequency of Response: On occasion.

Respondents: Insured nonmember banks.

Number of Respondents: 8,400.

Average Number of Hours Per Respondent: 245.

Total Annual Burden Hours: 2,059,986.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before September 5, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC contact would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the expiration date of the collection of information required by Regulation Z (12 CFR Part 226) as issued by the Board of Governors of the Federal Reserve System under the authority of title I of the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). Section 105 of the Act (15 U.S.C. 1604) designates the FRB as the issuer of the implementing regulations, and section 108(a) of the Act (15 U.S.C. 1607) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks. This information collection is mandatory (15 U.S.C. 1601 *et seq.*) and is not given confidential treatment.

Regulation Z prescribes uniform methods of computing the cost of credit, disclosure of credit terms, and procedures for resolving billing errors on certain credit accounts.

Dated: June 30, 1989.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-16013 Filed 7-6-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011246.

Title: Mitsui O.S.K. Lines, Ltd. and Noram Ocean Transport, Ltd. Space Charter Agreement in the U.S. Pacific Coast—Far East Trades.

Parties: Mitsui O.S.K. Lines, Ltd. ("MOL"), Noram Ocean Transport, Ltd. ("NORAM").

Synopsis: The proposed Agreement would authorize MOL to charter space on NORAM vessels in the westbound trade from ports on the U.S. Pacific Coast and inland points via such ports to ports and points in the Far East.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

Dated: June 30, 1989.

[FR Doc. 89–15924 Filed 7–6–89; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–010810–002.

Title: Port of Portland Terminal Agreement.

Parties: Port of Portland (Port), Pacific Molasses Company (PMC).

Filing Party: Elaine Lycan, Manager, Price Estimating & Regulatory Affairs, Port of Portland, P.O. Box 3529, Portland, OR 97208.

Synopsis: Agreement provides for an additional berth to handle bulk commodities. In return for PMC constructing bulk liquid pipes to the additional berth, the Agreement provides that the Port will: (1) Reduce, for two years, the per ton rate on bulk liquids leaving the facility paid by PMC as basic rent; and (2) provide PMC with preferential nonexclusive use of the wharf and apron at Berth 401 of Terminal 4.

Agreement No.: 224–004041–001.

Title: Puerto Rico Ports Authority Terminal Agreement.

Parties: Puerto Rico Ports Authority Rice Growers Association of California (P.R.), Inc.

Filing Party: Manuel Alvarez Melendez, Chief, Contracts, Real Estate, Insurance and Claims, Commonwealth of Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, PR 00936.

Synopsis: The Agreement proposes to extend the basic agreement to June 29, 1992, and to increase the monthly rental for berthing facilities to $3,666.66.

Agreement No.: 224–200262.

Title: Georgia Ports Authority Terminal Agreement.

Parties: Georgia Ports Authority (GPA), Hapag Lloyd AG (HL), Gulf Container Line (GCL), Compagnie Generale Maritime (CGM).

Synopsis: The Agreement provides for HL, GCL and CGM (Sagumex) to have exclusive use of certain premises on GPA's Container Berth 5, Garden City Terminal, Savannah, Georgia for their steamship operations, container storage and handling, transport of containers to be loaded/offloaded from vessels calling at the terminal and for parking an office trailer. GPA grants Sagumex certain incentive rates on wharfage, crane rental and slot costs, expressed as a single charge per TEU. The rates will increase by an amount equal to 60 percent of the Consumer Price Index annually. Sagumex will pay for dockage and other GPA services at GPA's published tariff rates.

By Order of the Federal Maritime Commission.

Dated: June 30, 1989.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89–16023 Filed 7–6–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Hometown Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Hometown Bancshares, Inc.*, Middlebourne, West Virginia; to engage *de novo* through its subsidiary, Hometown Insurance Agency, Inc., Middlebourne, West Virginia, in general insurance agency activities in a town having a population of 5,000 or less pursuant to § 225.25 (b)(8)(iii)(3) of the Board's Regulation Y. These activities will be conducted in the rural communities of Middlebourne, Pennsboro and Sistersville, West Virginia.

Board of Governors of the Federal Reserve System, June 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–15940 Filed 7–6–89; 8:45 am]

BILLING CODE 6210–01–M

Mackinaw Valley Financial Services, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 27, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mackinaw Valley Financial Services, Inc.*, Mackinaw, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Bank, Mackinaw, Illinois.

2. *North Linn Corporation*, Coggon, Iowa; to become a bank holding company by acquiring 99 percent of the voting shares of Linn County State Bank, Coggon, Iowa.

Board of Governors of the Federal Reserve System, June 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15941 Filed 7-6-89; 8:45 am]

BILLING CODE 6210-01-M

Merchant House; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(C)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 21, 1989.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Merchant House*, Santa Ana, California; to become a bank holding company by acquiring 52.60 percent of the voting shares of PNB Financial Group, Inc., Newport Beach, California, and thereby indirectly acquire Pacific National Bank, Newport Beach, California.

In connection with this application, Applicant also proposes to acquire Pacific National Realty Finance, Newport Beach, California, and thereby engage in mortgage banking pursuant to § 225.25(b)(1); and real estate appraisal pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15942 Filed 7-6-89; 8:45 am]

BILLING CODE 6210-01-M

PKBANKEN; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *PKBANKEN,* Stockholm, Sweden; to acquire Independent Finance, Inc., Bellevue, Washington, and thereby engage in making, acquiring, and servicing loans and other extensions of credit for the company's account and for the account of others, such as would be made by mortgage or commercial finance companies pursuant to § 225.25(b)(1), and such loans would be either secured or unsecured, with the collateral consisting of real estate, equipment and other tangible personal property; and leasing personal or real property, or acting as agent, broker or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–15943 Filed 7–6–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in August

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of one of the agency's initial review committees and a national advisory council in the month of August 1989. These committees will be performing review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: National Advisory Council on Drug Abuse, NIDA

Date and Time: August 15: 9:00 a.m.

Place: National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Closed.

Contact: Sheila Gardner, Room 8A–54, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0441.

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities, and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

* * * * *

Committee Name: Mental Health AIDS Research Review Committee, NIMH.

Date and Time: August 18: 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: OPEN—August 18: 8:30–9:15 a.m., CLOSED—Otherwise.

Contact: Regina Thomas, Room 9C–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of psychoneuro-immunological, psychosocial, behavioral, and psychological aspects of AIDS as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Camilla Holland, NIDA Committee Management Officer, Room 10–42, (301) 443–2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, (301) 443–4333. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

Date: June 30, 1989.

[FR Doc. 89–15953 Filed 7–6–89; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Injury Research Grant Review Committee; Meeting Change

This notice announces a change in the telephone number for the contact person for a previously announced meeting.

Federal Register Citation of Previous Announcement: 54 FR 26254

Name: Injury Research Grant Review Committee

Previously Announced Time and Date: 8:00 a.m.–5:00 p.m.—July 10–12, 1989

Previously Announced Telephone Number: Commercial: 404/639–4690

Change in the Telephone Number: 404/488–4690

Dated: July 4, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 89–16061 Filed 7–6–89; 8:45 am]

BILLING CODE 4160–18–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on Friday, June 16, 1989.

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

1. Temporary Exemptions for Purposes of Conducting Authorized Food Labeling Experiments (21 CFR 101.108(b))—0910–0151—This regulation provides means for firms to petition FDA and receive approval for conducting experiments with new labeling formats and information (that are not provided for by existing regulations) to increase consumer awareness. Respondents: Businesses or other for-profit, small businesses or organizations; Number of Respondents: 2; Number of Responses per Respondent: 1; Average Burden per Response: 40 hours; Estimated Annual Burden: 80 hours.

2. Scientific and Technical Competency Form—0925–0287—The National Cancer Institute has established a computer-based system for identifying and referring highly qualified laboratory support candidates to program officials. Applicants are requested to identify on the form those scientific and technical competencies they possess. This information is entered into an automated database. Respondents: Individuals or households, Federal agencies or employees; Number of Respondents: 600; Number of Responses per Respndent: 1; Average

Burden per Response: .083 hours; Estimated Annual Burden: 50 hours.

3. Health Education Assistance Loan (HEAL) Program Regulations—42 CFR Part 60—0915–0108—This submission is for reinstatement of the notification, reporting, and recordkeeping requirements to ensure that the lenders, holders, and schools participating in the HEAL program follow sound management procedures in the administration of federally insured loans for the approximately 29,000 annual borrowers. The HEAL Deferment Reporting Requirements (0915–0125) and the HEAL Recordkeeping Requirements (0915–0054) are being consolidated in this submission. Respondents: Non-profit institutions, State or local governments, businesses or other for-profit.

	No. of respondents	No. of hours per response	No. of responses per respondent
School:			
Notification	400	.067	72–73
Reporting	400	.017	72–73
Recordkeeping	400	.083	72–73
Lenders:			
Notification	66	.050	439
Reporting	66	.083	439
Recordkeeping	66	.033	439

Estimated Annual Burden.....9,668 hours

4. Program of Financial Assistance for Disadvantaged Health Professionas Students (FADHPS) Application and Regulations—42 CFR Part 57—0915–0110—The Agency needs the information collected under these regulatory requirements to assure that the schools are properly administering FADHPS funds. The information supplied on the application will help determine the number and type of scholarships each school will receive. This submission extends approval of information collections currently approved under this number and incorporates the FADHPS application currently approved under 0915–0117. Respondents: Non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Reporting 42 CFR			
57.2903	200	.50	1.0
57.2909	200	.083	.5
Recordkeeping 42 CFR			
57.2909(b)	200	.033	1.0

Estimated Annual Burden.....175 hours

Note: Information collection burden for recordkeeping under 42 CFR 57.2909(b)(1)(ii) is separately approved under OMB No. 0915–0047.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: June 29, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89–15917 Filed 7–6–89; 8:45 am]

BILLIING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. 89–2014]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 28, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Optional Relocation Payment Claim Forms

Office: Community Planning and Development

Description of the Need for the Information and its Proposed Use: Under the Uniformed Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Housing and Community Development Act of 1974, as amended, displaced persons must make proper application for relocation assistance payments for which they are eligible. The Department's optional claim forms will be used by both displaced persons to apply for payments for moving expenses and residential occupants to apply for replacement housing payments

Form Number: HUD–40054, 40055, 40056, 40057, 40058, 40061, and 40072

Respondents: Individuals or Households, State or Local Governments, Farms, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations

Frequency of Submission: Other

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD 40054	9,000		1		.5		4,500
HUD 40055	400		1		1.5		600
HUD 40056	400		1		1.0		400
HUD 40057	1,250		1		1.0		1,250
HUD 40058	5,750		1		1.0		5,750
HUD 40061	9,000		1		1.0		9,000
HUD 40072	2,000		1		1.0		2,000

Total Estimated Burden Hours: 23,500
Status: Reinstatement
Contact: Melvin Geffner, HUD, (202) 755–6336; John Allison, OMB, (202) 395–6880.

Date: June 28, 1989.

[FR Doc. 89–15911 Filed 7–6–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–2015]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as requried by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 26, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Inspection Form, Section 8 Existing Housing Program
Office: Housing
Description of the Need for the Information and its Proposed Use: Annual inspections are required to ensure that housing units leased in the Section 8 Existing Housing Program are and continue to be decent, safe, and sanitary as required by law. The forms will be used by the Public Housing Authorities staff to certify compliance with HUD when inspecting a dwelling unit and maintained in a file.
Form Number: HUD–52580 and HUD–52580A
Respondents: State or Local Governments
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	2,000		600		.05		600,000

Total Estimated Burden Hours: 600,000
Status: Extension
Contact: Gwen Carter, HUD (202) 755–6477; John Allison, OMB, (202) 395–6880.

Date: June 26, 1989.

[FR Doc. 89–15912 Filed 7–6–89; 8:45 am]

BILLING CODE 4210–01–M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–89–2005]

Dart Associates, Inc.; Hearing Date Change

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of hearing date change in the matter of Dart Associates, Inc. HUDALJ 89–01–MH.

SUMMARY: This notice announces a new date for a Presentation of Views previously set, in an earlier notice, for July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Honorable Alan W. Heifetz, Administrative Law Judge, U.S. Department of Housing and Urban Development, Room 2156, 451 Seventh

Street SW., Washington, DC 20410, Telephone: (202) 755–2540.

SUPPLEMENTARY INFORMATION: On June 20, 1989, in 54 FR 25909 the Department of Housing and Urban Development published notice of a Presentation of Views that was to commence at 9:30 a.m. on July 10, 1989. By order of the Administrative Law Judge, the schedule for the Presentation of Views has been extended and will now commence at 9:30 a.m. on July 17, 1989 in Room 2155, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Issued at Washington, DC, on June 30, 1989.

Stephen A. Martin,

Acting Deputy Assistant Secretary for Single Family Housing.

[FR Doc. 89–15930 Filed 7–6–89; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. N–89–2006]

Dart Associates, Inc.; Hearing Date Change

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of hearing date change in the matter of Dart Associates, Inc. HUDALJ 89–02–MH.

SUMMARY: This notice announces a new date for a Presentation of Views previously set, in an earlier notice, for July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Honorable Alan W. Heifetz, Administrative Law Judge, U.S. Department of Housing and Urban Development, Room 2156, 451 Seventh Street SW., Washington, DC 20410, Telephone: (202) 755–2540.

SUPPLEMENTARY INFORMATION: On June 20, 1989, in 54 FR 25908 the Department of Housing and Urban Development published notice of a Presentation of Views that was to commence at 9:30 a.m. on July 10, 1989. By order of the Administrative Law Judge, the schedule for the Presentation of Views has been extended and will now commence at 9:30 a.m. on July 17, 1989 in Room 2155, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Issued at Washington, DC, on June 30, 1989.

Stephen A. Martin,

Acting Deputy Assistant Secretary for Single Family Housing.

[FR Doc. 89–15931 Filed 7–6–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Performance Review Board Appointments

AGENCY: Department of the Interior.

ACTION: Notice of performance review board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Boards. The publication of these appointments is required by section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95–454, 5 U.S.C. 4314(c)(4).

DATES: These appointments are effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1800 C Street NW., Washington, DC 20240, Telephone Number: 343–6761.

SES Performance Review Boards (PRB)—1989–1990

Assistant Secretary for Fish and Wildlife and Parks

Robert Stanton, FNP, CA
Charles Odegaard, FNP, CA
Joseph Marler, FWS, CA
Jay Berst, FWS, CA
Joseph Doddridge, FWP, CA

Assistant Secretary for Indian Affairs

Jerry Jaeger, IA, (CA)
Walter Mills, IA, (CA)
Wilson Barber, IA, (CA)
James Stevens, IA, (CA)
Hazel Elbert, IA, (CA)

Assistant Secretary—Land and Minerals Management

James Hughes, LMM, (NC)
Thomas Allen, LLM, (CA)
Dean Stepanek, LLM, (CA)
Carson Culp, LLM, (CA)
Ed Cassidy, LMS, (NC)
Thomas Gernhofer, LMS, (CA)
Robert Fagin, LSM, (CA)

Office of the Secretary and Assistant Secretary—Policy Budget and Administration

Bart House, PBA, (CA)
James Jadlos, PBA, (CA)
Larry Cardwell, PBA, (CA)
Carmen Maymi, O/S, (CA)
Mary Ann Lawler, PBA, (CA)

Office of the Solicitor

Martin J. Suuberg, SOL, (NC)
Carol A. Clancy, SOL, (CA)
Timothy Elliott, SOL, (CA)
Anthony R. Conte, SOL, (CA)
Lawrence E. Cox, SOL, (CA)

Assistant Secretary for Water and Science

Billy Martin, WBR, (CA)
John Keyes, WBR, (CA)
David Brown, WBM, (CA)
George Dooley, WBM, (CA)
Peter Bermel, WGS, (CA)
Stanley Sauer, WGS, (CA)
Harlan Watson, W&S, (NC)

Departmental Performance Review Board

Lou Gallegos, PBA, (NC)
Robert F. Weimer, O/S, (NC)
Doyle Frederick, WGS, (CA)
Charles (Ed) Kay, PBA, (CA)
Morris A. Simms, PBA, (CA)
Charlotte Spann, O/S, (CA)
Herbert Cables, FNP, (CA)

Approved:

Charles E. Kay,

Principal Deputy Assistant Secretary, Policy, Budget and Administration.

Date: June 29, 1989.

[FR Doc. 89–15978 Filed 7–6–89; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[AZ 020–09–4212–11; AZA 18069]

Realty Action: Recreation and Public Purposes (R&PP) Act Classification, Arizona

The city of Tempe proposes development of the following public land within its Rio Salado Project of river reclamation and recreation. Approximately 420 acres are affected.

Gila and Salt River Meridian, Maricopa County, Arizona

T. 1 N., R. 4 E.
Sec. 8, portion of S½SW¼, SW¼SE¼;
Sec. 14, N½NE¼;
Sec. 17, N½.

Lease A 18069 has been granted affecting the NE¼NW¼, sec. 14.

The lands have been examined and found suitable for classification for lease and conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*) and the regulations of 43 CFR Parts 2740 and 2912.

In addition, the land is determined to meet general classification criteria of 43 CFR 2410.1(a–d) and specific public purposes classification criteria of 43 CFR 2430.4(c).

Classification of this land under the provisions of the above cited R&PP Act segregates them from appropriations under the public lands laws and the

mining laws, but not from applications under the mineral leasing laws or the R&PP Act for a period of eighteen months from the date this notice is published in the **Federal Register** (43 CFR 2741.5(2)).

Federal Aviation Administration withdrawal application A 23853 affects sec. 17. Existing withdrawals for Salt River Project purposes will be modified by the holding agency, the Bureau of Reclamation. BLM will ensure the compatibility of all proposed uses prior to leasing additional and to the city of Tempe.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Charles R. Frost,

Associate Manager.

Date: June 26, 1989.

[FR Doc. 89-15915 Filed 7-6-89; 8:45 am]

BILLING CODE 4310-32-M

[UT-020-09-4333-12-ABVD]

Salt Lake District; District Multiple Use Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of multiple use advisory council meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Salt Lake District Multiple Use Advisory Council will be held on August 7 and 8, 1989. The Council will convene at 1:00 p.m. at the Salt Lake District Office. Following a brief business meeting the Council will depart for a one and one-half day tour of West Desert development sites and/or other sites of interest. That first evening (August 7), the Council will reconvene for a second business meeting starting 7:00 p.m. at the Stateline Inn, Wendover, NV.

During the meetings and accompanying tour the Council will address issues including: The salt loss at the Bonneville Salt Flats, the Pony Express OHV Plan, hazardous waste facility developments, Firex 88 rehabilitation progress, noxious weed infestations, the riparian enhancement initiative in Rich County, and updates on other general District programs.

The public is invited to attend this meeting or to file a written statement for the Council's consideration. Those wishing to make an oral statement must notify Deane Zeller, District Manager, 2370 South 2300 West, Salt Lake City, Utah, 84119 by August 1, 1989.

Ernest J. Eberhard,

Acting District Manager.

[FR Doc. 89-15950 Filed 7-6-89; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-933-09-4332-09; GP9-263]

Public Review Period for USGS/USBM "Mineral Survey Reports" Prepared for BLM Wilderness Study Areas; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Oregon Bureau of Land Management (BLM) is requesting public review of combined U.S. Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" for the following Wilderness Study Areas (WSAs). These WSAs have been preliminarily recommended suitable for inclusion into the National Wilderness Preservation System:

1. Alvord Desert WSA (OR-2-74), East Alvord WSA (OR-2-73A), Harney and Malheur Counties, Oregon (USGS Bulletin 1739-B), cost—$3.25;
2. Home Creek WSA (OR-2-85H), Harney County, Oregon (USGS Bulletin 1740-C), cost—$1.00;
3. Blitzen River WSA (OR-2-86E), Harney County, Oregon (USGS Bulletin 1740-D), cost—$1.25;
4. Fifteen Mile Creek WSA (OR-3-156), Oregon Canyon WSA (OR-3-157), Twelve Mile Creek WSA (OR-3-162), Willow Creek WSA (OR-3-152), Malheur and Harney Counties, Oregon (USGS Bulletin 1742-B), cost—$2.00;
5. Jordan Craters WSA (OR-3-128), Malheur County, Oregon (USGS Open File Report 88-572), cost—$2.25;
6. North Pole Ridge WSA (OR-5-8), Sherman and Gilliam Counties, Oregon (USGS Bulletin 1743-B), cost—$1.50;
7. Spring Basin WSA (OR-5-9), Wheeler County, Oregon (USGS Bulletin 1743-C), cost—$1.50.

If the public provides a new interpretation of the data presented in the mineral reports or submits new mineral data for consideration, BLM will send these comments to USGS/USBM. Significant new findings, if any, will be documented in the BLM "Wilderness Study Report" which will be reviewed by the Secretary, the President, and by Congress before final decisions on wilderness designation are made.

Copies of the mineral survey reports are available for review in BLM offices in Portland, Salem, Eugene, Roseburg, Medford, Coos Bay, Lakeview, Burns, Prineville, Vale, and Spokane. These copies are not available for sale or removal from BLM offices. Copies, however, may be purchased from the following address: Books and Open-File Report Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225, (303) 236-7476. Payment by check or money order must accompany all orders.

DATE: The public review of the mineral survey reports named in this notice shall conclude on September 15, 1989.

ADDRESS: Send comments and information to: State Director (920), BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Eric Hoffman, Division of Mineral Resources at (503) 231-6974 or David Harmon, Division of Lands and Renewable Resources at (503) 231-6823, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable by BLM for inclusion into the wilderness system to determine the mineral values, if any, that may be present in such areas.

There are about 2.8 million acres of Wilderness Study Areas identified by BLM in Oregon, of which about 1.3 million acres have been preliminarily recommended as suitable. These 7 reports are part of approximately 45 combined mineral survey reports that will be prepared by USGS/USBM. The next batch of mineral survey reports will be available for public review during the fall of 1989.

The BLM Oregon State Director is providing this public review and comment period in order to insure that all available minerals data are considered by Congress prior to making its final wilderness suitability decisions. BLM will review the public comments and will forward to USGS/USBM any

significant new minerals data or new interpretations of the minerals data submitted by the public.

The information requested from the public via this invitation is not limited to any specific energy or mineral resource. Comments should be provided in writing and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and USGS/USBM Mineral Survey Report.
2. Mineral(s) of interest.
3. A map or land description by legal subdivision of the public land survey grid or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.
4. Information and documents that depict the new data or reinterpretation of data.
5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGS, or USBM assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc. should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and marked confidential will be treated as proprietary data and will not be released to the public without consent.

Dated: June 28, 1989.

Charles W. Luscher,

State Director.

[FR Doc. 89–15959 Filed 7–6–89; 8:45 am]

BILLING CODE 4310–33–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. Parent corporation and address of principal office: Browning-Ferris Industries, Inc., 757 N. Eldridge, Houston, Texas 77079, Delaware.

B. Wholly-owned subsidiaries which will participate in the operations, address of their respective offices, and states of incorporation:

1. Action Disposal System, Inc., Minnesota.
2. American Sheds, Inc., California.
3. Ameride Corporation, California.
4. Area Ninety Landfill, Inc./Ninety Plus, Inc., Louisiana.
5. Atkinson Enterprises, Inc., Indiana.
6. Azusa Land Reclamation Co., Inc., California.
7. BFI of Ponce, Inc., Puerto Rico.
8. BFI Constructors, California.
9. BFI Energy Systems, Inc./BFI Ref-Fuel, Inc., Delaware.
10. BFI Energy Systems, Inc., of Albany, Inc., Delaware.
11. BFI Energy Systems of Bergen County, Inc., New Jersey.
12. BFI Energy Systems of Boston, Inc., Massachusetts.
13. BFI Energy Systems of Brookhaven, Inc., Delaware.
14. BFI Energy Systems of Broward County, Inc., Delaware.
15. BFI Energy Systems of Delaware County, Inc., Delaware.
16. BFI Energy Systems of Essex County, Inc., New Jersey.
17. BFI Energy Systems of Fresno, Inc., California.
18. BFI Energy Systems of Hemsptead, Inc., Delaware.
19. BFI Energy Systems of Lehigh Valley, Inc., Delaware.
20. BFI Energy Systems of Los Angeles, Inc., Delaware.
21. BFI Energy Systems of Lowell, Inc., Delaware.
22. BFI Energy Systems of Midstate Connecticut, Inc., Delaware.
23. BFI Energy Systems of Oyster Bay, Inc., Delaware.
24. BFI Energy Systems of Plymouth, Inc., Delaware.
25. BFI Energy Systems of Southeastern Connecticut, Inc., Delaware.
26. BFI Energy Systems of Texas, Inc., Delaware.
27. BFI Environmental Waste Systems, Inc., Delaware.
28. BFI Medical Waste Systems of California, Inc., Georgia.
29. BFI Medical Waste Systems of Arizona, Inc., Delaware.
30. BFI Medical Waste Systems of Colorado, Inc., Delaware.
31. BFI Medical Waste Systems of Illinois, Inc., Delaware.
32. BFI Medical Waste Systems of Minnesota, Inc., Minnesota.
33. BFI Medical Waste Systems of Oregon, Inc., Delaware.
34. BFI Medical Waste Systems of Utah, Inc., Delaware.
35. BFI Medical Waste Systems of (East Central) Inc., Delaware.
36. BFI Medical Waste Systems (Steel), Inc., Delaware.
37. BFI Medical Waste Systems (South Central), Inc., Tennessee.
38. BFI Medical Waste Systems (Southeast), Inc., Delaware.
39. BFI Modern Landfill, Inc., Illinois.
40. BFI Portable Services, Inc., Delaware.
41. BFI Recycling Systems of Minnesota, Inc., Minnesota.
43. BFI of North Metro, Inc., Michigan.
44. BFI Stephens, Inc., Texas.
45. BFI Waste Systems, Inc., Texas.
46. BFI Waste Systems of Indiana, Inc., Indiana.
47. Bio-Medical Services Corp., Georgia.
48. Bio-Tech Services, Inc., Missouri.
49. Brooks Disposal Service, Inc., Illinois.
50. Browning-Ferris, Inc., Delaware.
51. Browning-Ferris, Inc., Maryland.
52. Browning-Ferris Industries Chemical Services, Inc., Nevada.
53. Browning-Ferris Industries (DC), Inc., Delaware.
54. Browning-Ferris Industries, Delaware.
55. Browning-Ferris Industries Waste Systems, Inc., New Jersey.
56. Browning-Ferris Industries, Inc., Massachusetts.
57. Browning-Ferris Industries of Alabama, Inc., Alabama.
58. Browning-Ferris Industries of Arkansas, Inc., Arkansas.
59. Browning-Ferris Industries of Arizona, Inc., Delaware.
60. Browning-Ferris Industries of California, Inc., California.
61. Browning-Ferris Industries of Central Jersey, Inc., Delaware.
62. Browning-Ferris Industries of Colorado, Colorado.
63. Browning-Ferris Industries of Connecticut, Inc., Delaware.
64. Browning-Ferris Industries of Eastern Pennsylvania, Inc., Pennsylvania.
65. Browning-Ferris Industries of Elizabeth, N.J., Inc., New Jersey.
66. Browning-Ferris Industries of Florida, Inc., Delaware.
67. Browning-Ferris Industries of Georgia, Inc., Georgia.
68. Browning-Ferris Industries of Hawaii, Inc., Delaware.
69. Browning-Ferris Industries of Idaho, Inc., Idaho.
70. Browning-Ferris Industries of Illinois, Inc., Delaware.
71. Browning-Ferris Industries of Indiana, Inc., Indiana.
72. Browning-Ferris Industries of Iowa, Inc., Iowa.
73. Browning-Ferris Industries of Kansas, Inc., Kansas.
74. Browning-Ferris Industries of Kansas City, Inc., Missouri.
75. Browning-Ferris Industries of Kentucky, Inc., Delaware.
76. Browning-Ferris Industries of Louisiana, Inc., Louisiana.
77. Browning-Ferris Industries of Maine, Delaware.

78. Browning-Ferris Industries of Michigan, Inc., Michigan.
79. Browning-Ferris Industries of Minnesota, Inc., Minnesota.
80. Browning-Ferris Industries of Mississippi, Inc., Mississippi.
81. Browning-Ferris Industries of Montana, Inc., Nevada.
82. Browning-Ferris Industries of Nebraska, Inc., Nebraska.
83. Browning-Ferris Industries of New Hampshire, Inc., New Hampshire.
84. Browning-Ferris Industries of New Jersey, Inc., New Jersey.
85. Browning-Ferris Industries of New York, Inc., New York.
86. Browning-Ferris Industries of New Jersey, Inc., New Jersey.
87. Browning-Ferris Industries of Ohio, Inc., Delaware.
88. Browning-Ferris Industries of Ohio and Michigan, Inc., Ohio.
89. Browning-Ferris Industries of Oregon, Inc., Oregon.
90. Browning-Ferris Industries of Oyster Bay, Inc., Delaware.
91. Browning-Ferris Industries of Paterson, N.J., Inc., New Jersey.
92. Browning-Ferris Industries of Pennsylvania, Inc., Delaware.
93. Browning-Ferris Industries of Puerto Rico, Inc., Puerto Rico.
94. Browning-Ferris Industries of Quincy, Illinois, Inc., Iowa.
95. Browning-Ferris Industries of Rhode Island, Inc., Delaware.
96. Browning-Ferris Industries of Rochester, Inc., Minnesota.
97. Browning-Ferris Industries of South Atlantic, Inc., North Carolina.
98. Browning-Ferris Industries of South Jersey, Inc., New Jersey.
99. Browning-Ferris Industries of Southern Illinois, Inc., Delaware.
100. Browning-Ferris Industries of Southeastern Michigan, Inc., Michigan.
101. Browning-Ferris Industries of Southern Indiana, Inc., Indiana.
102. Browning-Ferris Industries of Southern Illinois, Inc., Illinois.
103. Browning-Ferris Industries of Springfield, Inc., Missouri.
104. Browning-Ferris Industries of St. Louis, Inc., Delaware.
105. Browning-Ferris Industries of Tennessee, Inc., Tennessee.
106. Browning-Ferris Industries of Utah, Inc., Utah.
107. Browning-Ferris Industries of Vermont, Inc., Vermont.
108. Browning-Ferris Industries of Washington, Inc., Washington.
109. Browning-Ferris Industries of West Virginia, Inc., Delaware.
110. Browning-Ferris Industries of Western Jersey, Inc., New Jersey.
111. Browning-Ferris Industries of Wisconsin, Inc., Wisconsin.
112. Browning-Ferris Industries of Wyoming, Inc., Wyoming.
113. Browning-Ferris Services, Inc., Delaware.
114. Cape Coral Disposal Service, Inc., Florida.
115. Captiva Disposal, Inc., Florida.
116. CECOS International, Inc., New York.
117. CECOS Treatment Corporation, Connecticut.
118. CMS Development Corp., North Carolina.
119. Chemical Reclamation Services, Inc., Texas.
120. Community Transit Services, Inc., California.
121. Dave Systems, Inc., California.
122. DeWatering Services, Inc., Louisiana.
123. Disposal Specialists, Inc., Vermont.
124. Dooley Equipment Corporation, Massachusetts.
125. Empire Sweeping Company, Ohio.
126. E & E Hauling, Inc., Illinois.
127. ESI, Inc., Pennsylvania.
128. Geneva Waste Services, Inc., New York.
129. George Fenske Sanitary Service, Inc., Minnesota.
130. Hall's Ferry Investments, Inc., Missouri.
131. Heavy Equipment Leasing Services Co., Inc., New York.
132. Health Management, Inc., Tennessee.
133. Health Management of New Orleans, Inc., Louisiana.
134. Highway 36 Land Development Company, Colorado.
135. Homestead Land Corp., Pennsylvania.
136. HL–NIW, Inc., New York.
137. Indoco, Inc., Texas.
138. International Disposal Corp., Texas.
139. International Disposal Corp. of California, California.
140. International Disposal Corporation of Indiana, Delaware.
141. International Disposal Corporation of Kansas, Kansas.
142. Isler's Refuse Service, Inc., Ohio.
143. Jeffco Land Reclamation Company, Colorado.
144. Jeffco Land Reclamation, Inc., Missouri.
145. Jefferson Pike Landfill, Inc., Tennessee.
146. Joe Ball Sanitation Service, Inc., New York.
147. Karas Trucking Co., Inc., Ohio.
148. LaGrange Disposal Co., Inc., Illinois.
149. Land Reclamation, Inc., New York.
150. Landfill, Inc., Colorado.
151. Lanfill, Inc., Missouri.
152. Louis Kmito & Son, Inc., Massachusetts.
153. Lyon Development Co., Michigan.
154. Merrimack Valley Medical Services Company, Inc., Masachusetts.
155. National Disposal Service, Nebraska.
156. Newco Waste Systems, Inc., New York.
157. Newco Waste Systems of New Jersey, Inc., New Jersey.
158. Niagara Landfill, Inc., New York.
159. Niagara Recycling, Inc., New York.
160. Niagara Sanitation Company, Inc., New York.
161. Norcal Trans, Inc., California.
162. Northern Disposal, Inc., Massachusetts.
163. Pine Bend Landfill, Inc., Minnesota.
164. Pine Island Disposal, Inc., Florida.
165. RHF, Inc., Texas.
166. RPS, Inc., Colorado.
167. RWCGP, Inc., Texas.
168. Residential Service, Inc., Nebraska.
169. Resource Recovery Corporation, Massachusetts.
170. River City Refuse Removal, Inc., Wisconsin.
171. Rot's Disposal Service, Inc., Illinois.
172. Springfield Relay Systems, Inc., Missouri.
173. Tanis Leasing Company, Florida.
174. TRC, Inc., Pennsylvania.
175. Town and Country Waste Service, Inc., Wisconsin.
176. Troy Area Landfill, Inc., Wisconsin.
177. United Nottingham, Inc., California.
178. Van Tran of Tucson, Inc., Arizona.
179. Warner Hill Development Company, Ohio.
180. Warner Hill Improvement Company, Ohio.
181. Waste Disposal, Inc., Kansas.
182. West Roxbury Crushed Stone Co., Massachusetts.
183. Westowns Disposal Systems, Inc., Wyoming.
184. Woodlake Sanitary Service, Inc., Minnesota.

Noreta R. McGee,

Secretary.

[FR Doc. 89–15784 Filed 7–6–89; 8:45 am]

BILLING CODE 7035–01–M

Intent To Engage in Compensated Intercorporate Haulings Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use

compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation: The Clorox Company, 1221 Broadway, Oakland, CA 94612–1888.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) of incorporation:

1. The Clorox Company (Household Products Company, a Delaware corporation.

2. [1] Food Service Products Company, a Delaware corporation.

3. The HVR Company, a Delaware corporation.

4. The Kingsford Products Company, a Delaware corporation.

5. Olympic HomeCare Products Company, a Delaware corporation.

6. Prince Castle, Inc., an Illinois corporation.

7. Aspen Water Company, a Delaware corporation.

8. Deer Park Spring Water, Inc., a Delaware corporation.

9. Deep Rock Water Company, a Florida corporation.

Noreta R. McGee,

Secretary.

[FR Doc. 89–15783 Filed 7–6–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket Nos. 31493 and 31493 (Sub-No. 1)]

Filing and Schedule of Submissions; Blackstone Capital Partners L.P., et al.

On June 15, 1989, Blackstone Capital Partners L.P. filed a petition for exemption to acquire control of CNW Corporation (CNW), Chicago and North western Transportation Company (CNWT) and certain carriers operated as part of the CNWT system. Blackstone seeks an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343 regarding its common control of CNW/CNWT and the carriers it was authorized to control through control of Transtar, Inc., in Finance Docket No. 31363, *Blackstone Capital Partners L.P.—Exemption from 49 U.S.C. 10746, 11321, and 11343* (not printed), served December 23, 1988. Blackstone also seeks an exemption under section 10505 from applicable provisions of 49 U.S.C. 11321 and requests that the Commission make such findings as may be required to grant that exemption.

On June 21, 1989, CNWT and Midwestern Railroad Properties, Inc. (MRPI) filed a notice of exemption for issuance of securities and assumption of liabilities under 49 CFR Part 1175 and 49 U.S.C. 10505 and 11301. The securities, obligations, and liabilities of CNWT identified in the notice relate to long-term financing, including the execution of promissory notes by CNWT in an amount up to $310 million. The notice also covers the issuance of guarantees, security interests or mortgages by CNWT and/or MRPI in a principal amount of up to $1,060 million. The Commission has stayed the effective date of this exemption until July 31, 1989, in a decision served July 5, 1989.

The Commission requests comments in response to both the petition for exemption filed in Finance Docket No. 31493 and the notice of exemption for issuance of securities filed in Finance Docket 31493 (Sub-No. 1). Although docketed separately, these two transactions appear interrelated, and we will consolidate them. The lead case will be Finance Docket No. 31493, and all comments should refer to that case number. Comments on the petition should address the section 10505 exemption criteria in light of the statutory standards at section 11344(d) of the Act. Comments on the notice should address whether permitting the proposed securities issuance to take effect through exemption would be consistent with the provisions of 49 CFR Part 1175, or whether the proposed issuance should be considered under the standards of 49 U.S.C. 11301. Comments also should indicate whether we should approve the issuance if considered under 49 U.S.C. 11301.

Copies of the petition for exemption can be obtained from Blackstone's representative: Betty Jo Christian or Timothy M. Walsh, Steptoe & Johnson, 1330 Connecticut Avenue NW., Washington, DC 20036–1795, (202) 429–3000.

Copies of the notice of the securities exemption can be obtained from the CNWT: James P. Daley or Stuart F. Gassner, Chicago and North western Transportation Company, One North Western Center, Chicago, Illinois 60606, (312) 559–7000.

Parties should both notify the Commission of their intent to participate in this proceeding and file any comments on the procedural schedule established below, no later than July 14, 1989. If comments we receive on the procedural schedule convince us that this schedule is inappropriate, we will immediately issue a notice establishing a new schedule or postponing the due dates of the existing one. Otherwise, parties should file comments and supporting verified statements in response to the petition and notice no later than July 28, 1989. Applicants may file a reply and rebuttal verified statements no later than August 4, 1989.

In connection with Blackstone's proposed acquisition of control of CNW, Union Pacific Corporation (UPC) will take certain actions. In addition to the planned acquisition of certain trackage rights over CNW lines by Union Pacific Railroad, UPC will acquire a substantial preferred stock interest in Chicago and North Western Holdings Corp. At UPC's option, after five years this interest would be convertible into common stock representing 25 percent of Holding's common stock on a fully-diluted basis. UPC has indicated it will seek Commission approval, exemption, or declaration that no approval or exemption is required for the trackage rights and any conversion of preferred to common stock interest after the Commission acts on the Blackstone proposals.

We specifically seek comments on whether the Blackstone and UPC proposals can or should be considered in isolation. The competitive considerations which will be the primary focus of either an application or exemption proceeding may require contemporaneous analysis of all aspects of the CNW takeover. Comments directed to this issue will substantially assist the Commission in making a determination on this question. Comments must be filed no later than July 14, 1989, with a Commission determination on this issue to made shortly thereafter.

An original and ten (10) copies of all comments should be filed with the Secretary of the Commission. In addition, a copy of any such comments must be served on petitioners' representatives at the address indicated above.

Dated: June 30, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–16101 Filed 7–6–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31447]

Burlington Northern Railroad Co.—Sale, Purchase, and Operation Exemption—Missouri Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

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[1] Food Service Products Company is a successor by merger of: Moore's Food Products, Inc., Domani Foods Company and/or DFC Foods Company.

SUMMARY: The Interstate Commerce Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 11343–11345 the purchase from the Missouri Pacific Railroad Company and operation by Burlington Northern Railroad Company (BN) of approximately 1.055 miles of rail line and the real property between milepost 13.97 and milepost 15.025 near Centralia, in Marion and Clinton Counties, IL, subject to standard labor protective conditions and a historic preservation condition.

DATES: This exemption is effective on July 9, 1989. Petitions for reconsideration must be filed by July 31, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31447 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representatives:
William R. Power (BN), 777 Main Street, Fort Worth, TX 76102
Joseph D. Anthofer (MP), 1416 Dodge Street, Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services, (202) 275–1721.]

Decided: June 19, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Commissioner Lamboley concurred with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89–15938 Filed 7–6–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89–11]

Leonardo Tomas Amador d/b/a Amador Pharmacy Discount Miami, FL; Hearing

Notice is hereby given that on December 21, 1988, the Drug Enforcement Administration, Department of Justice, issued to Lecnardo Tomas Amador, d/b/a Amador Pharmacy Discount, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate or Registration, AA2348173, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, July 6, 1989, commencing at 9:30 a.m., at the United States Tax Court, Room 1524, 51 Southwest First Avenue, Miami, Florida.

Dated: June 23, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–15910 Filed 7–6–89; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to labors and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-

Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Maryland
MD89–19
pp. 456c–456d
Maryland
MD89–20
pp. 456e–456f
Maryland
MD89–21
pp. 456g–456h

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT89–1 (Jan. 6, 1989)
p. 63
District of Columbia
DC89–1 (Jan. 6, 1989)
p. 84
Maryland
MD89–1 (Jan. 6, 1989)
p. 411
Maryland
MD89–5 (Jan. 6, 1989)
pp. 427–428
Maryland
MD89–15 (Jan. 6, 1989)
p. 449
Tennessee
TN89–5 (Jan. 6, 1989)
pp. 1095–1098
Virginia
VA89–56 (Jan. 6, 1989)
p. 1188rrr

Volume II

Iowa
IA89–6 (Jan. 6, 1989)
p. 52
Texas
TX89–3 (Jan. 6, 1989)
p. 986
Texas
TX89–11 (Jan. 6, 1989)
p. 1014

Volume III

Idaho
ID89–1 (Jan. 6, 1989)
pp. 146–156a
Idaho
ID89–2 (Jan. 6, 1989)
pp. 158–159
Nevada
NV89–1 (Jan. 6, 1989)
p. 244
Washington
WA89–1 (Jan. 6, 1989)
pp. 346–387
Washington
WA89–3 (Jan. 6, 1989)
pp. 402–407
Washington
WA89–7 (Jan. 6, 1989)
pp. 418–422
Washington
WA89–8 (Jan. 6, 1989)
pp. 424–425

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issue on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 30th day of June 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89–15937 Filed 7–6–89; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–89–102–C]

Carolina Stalite Co.; Petition for Modification of Application of Mandatory Safety Standard

Carolina Stalite Company, P.O. Box 1037, Salisbury, North Carolina 28144 has filed a petition to modify the application of 30 CFR 77.501 (electric distribution circuits and equipment; repair) to its Stalite Coal Mine (I.D. No. 31–02032) located in Rowan County, North Carolina. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that no electrical work be performed on electric distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person.

2. As an alternate method, petitioner proposes the person required to perform electrical work include individuals employed by Tri Electric, Inc., of Spencer, North Carolina, who have been certified by the North Carolina Board of Electrical Examiners.

3. In support of this request, petitioner states that—

(a) The highest voltage in the coal yard is 480 volts; and

(b) There are three or four employees working in the coal yard. The recent addition of a seasonal bagging operation and the sale of small quantities of coal technically re-classifying Stalite Coal Company as a "coal mine", adds no new electrical hazards commonly associated with a conventional coal mine engaged in extraction; and there are no enclosed or underground facilities.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Dated: June 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–15990 Filed 7–6–89; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–89–100–C]

H.L.&W. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

H.L.&W. Coal Company, 14 Maple Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 2 Slope (I.D. No. 36–07269) located in Schuylkill

County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or other devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices are installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Dated: June 29, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-15991 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-97-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575-1430 has filed a petition to modify the application of 30 CFR 75.1707 (escapeways; intake air, separation from belt and trolley haulage entries) to its Dobbin Mine (I.D. No. 46-05480) located in Grant County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the escapeway ventilated with intake air be separated from the belt and trolley haulage entries.

2. As an alternate method, petitioner proposes to use the intake trolley haulage entry as the intake escapeway in continuous and longwall mining sections.

3. The velocity of air in the trolley entry would be increased, by using the trolley entry as an intake.

4. The development of three entries would result in 25 percent less exposure of miners to roof and rib hazards typical of this mine when compared to the four entry development.

5. In support of this request, petitioner proposes to install a low level carbon monoxide (CO) detection system in first and second mining areas where trolley systems are installed in the intake entry. The monitoring devices would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal would be activated when the CO level is 10 parts per million (ppm) above the ambient air and an audible signal would sound at 15 ppm above the ambient air. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal would be activated at an attended surface location where there is two-way communication. The CO system would be capable of monitoring electrical continuity and detecting electrical malfunctions.

6. The CO system would be visually examined at least once each coal-producing shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

7. If the CO monitoring system becomes inoperative, the trolley would continue to operate and qualified persons would patrol and monitor the trolley entry using hand-held CO detecting devices.

8. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Date: June 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-15992 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-103-C]

Mountain Run Enterprises; Petition for Modification of Application of Mandatory Safety Standard

Mountain Run Enterprises, P.O. Box 85, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Orchard Vein Slope (I.D. No. 36-07864) located in Schuylkill County, Pennsylvania. The petition if filed under section 101(c) of the Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices are installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Dated: June 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-15993 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-98-C]

Snyder Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Snyder Coal Company, RD No. 2, Box 93, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Rothermel Slope (I.D. No. 36-07588) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that track haulage cars be equipped with automatic couplers.

2. Installation of automatic couplers on the track haulage cars would result in a diminution of safety to the miners affected due to the sharp radius curves in the track, the undulating pitch of the slopes, the different types of small lightweight cars, and the systems of haulage.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Dated: June 29, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-15994 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-99-C]

Tab-Col Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Tab-Col Mining, Inc., P.O. Box 2662, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 2 (I.D. No. 15-09763) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Elkhorn Seam ranging from 41 to 47 inches in height. The seam has ascending and descending grades creating hilly areas over which the cars must traverse.

3. Petitioner states that the use of canopies on the mine's electric face equipment would result in a diminution of safety to the miners affected because the canopies would limit the operator's visibility and seating position, and the canopies would strike the roof and rib support on the high spots, possibly creating a hazard to all involved.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Date: June 29, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-15995 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-101-C]

West End Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

West End Coal Company, R.D. No. 1, Box 315-A, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Last Chance Slope (I.D. No. 36-07859) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or other devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices are installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Dated: June 29, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-15996 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-43-M

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

Meeting and Public Hearing

Background

The Lower Mississippi Delta Development Commission was created by Pub. L. 100-460, signed on October 1, 1988. The purpose of the Commission is to identify and study the economic development, infrastructure, employment, transportation, resource development, education, health care, housing, and recreation needs of the Lower Mississippi Delta region by seeking and encouraging the participation of interested citizens, public officials, groups, agencies, and others in developing a 10-year plan that makes recommendations and establishes priorities to alleviate the needs identified. The Commission will make its report to Congress, the President, and the Governors of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee no later than May 14, 1990.

This notice announces a meeting and public hearing of the Commission.

Meeting

Time: 5:00 p.m., July 13, 1989
Place: Sikeston Inn, I-55 and U.S. 62, Sikeston, MO 63801
Status: Open meeting.

Public Hearing

Time: 7:30 p.m., July 13, 1989
Place: Sikeston Inn, I-55 and U.S. 62, Sikeston, MO 63801
Status: Public oral and written testimony encouraged.

Contact: Ann Sartwell, Telephone (901) 753-1400.

Wilbur F. Hawkins,

Executive Director.

[FR Doc. 89-15960 Filed 7-6-89; 8:45 am]

BILLING CODE 6820-SN-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-52]

Granting of Federal Information Processing Standards (FIPS) Waiver Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of granting of FIPS waiver request.

SUMMARY: NASA hereby gives notices that NASA's Senior Official for Information Resources Management granted a request for a waiver of FIPS 60-2, 61-1, 63-1, and 97 to acquire a Massively Parallel Processor (MPP) Computing System for the Science Information Systems Center (SISC) to the Goddard Space Flight Center, Greenbelt, MD.

DATE: The waiver was effective May 10, 1989.

ADDRESS: National Aeronautics and Space Administration, Code NT, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Wallace O. Keene, Assistant Associate Administrator for Information Resources Management, (202) 453-1775.

C. Howard Robins, Jr.,

Associate Administrator for Management.

June 29, 1989.

[FR Doc. 89-15939 Filed 7-6-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before August 21, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year US. Govenment agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Defense Nuclear Agency (N1-374-89-26). Routine Visual Information Records. (Historic photographic files, documentary motion picture film of Research and Development projects, and official command presentations will be retained as permanent records.)

2. Defense Nuclear Agency (N1-374-89-27). Routine Headquarters Medical Unit files.

3. Defense Nuclear Agency (N1–374–89–29 and N1–374–89–30). Temporary military personnel records. (Official personnel files are maintained by the Armed Service component.)

4. Defense Nuclear Agency (N1–374–89–31). Local and temporary duty travel request files.

5. Defense Nuclear Agency (N1–374–89–34). Routine civilian Personnel Management Administrative files.

6. Defense Nuclear Agency (N1–374–89–35). Publications Distribution Records.

7. Defense Nuclear Agency (N1–374–89–36). Records relating to Equal Employment and Opportunity Programs.

8. Defense Nuclear Agency (N1–374–89–37). Monthly Materials Handling Reports and other storage operations reports.

9. Farm Credit Administration (N1–103–89–3). Association correspondence, shareholder disclosure information, and miscellaneous reports produced by Farm Credit System institutions.

10. Farm Credit Administration (N1–103–89–4). Office files of a former member of the Farm Credit Administration Board.

11. Department of the Interior, National Park Service (N1–79–89–1). Construction and Professional Service Contract Files.

12. Department of the Interior, Minerals Management Service (N1–473–88–1). Revised comprehensive records schedule.

13. National Council of Public Works Improvement (N1–220–89–8). Routine administrative items, duplicates and non-record items which do not substantially document the activities of the Council. Substantial correspondence, meetings and public hearing files, reports, studies, press releases and audiovisual files are being retained for permanent retention.

14. Department of State, Bureau of Administration (N1–59–88–39). Routine administrative and facilitative records.

15. Department of State, Bureau of European and Canadian Affairs, Regional Political Economic Affairs (N1–59–89–11). Documents of the Organization of European Economic Cooperation.

16. Tennessee Valley Authority, Division of Medical Services (N1–142–88–18). Psychological case records and Employee Assistance Program Files.

17. Department of the Treasury, United States Secret Service (N1–87–88–1). Revisions to a comprehensive records schedule for the Intelligence Division.

18. Department of the Treasury, Financial Management Service (N1–425–89–1). Reconstruction Finance Corporation closed litigation files, 1961–1963.

Dated: June 30, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–15970 Filed 7–6–89; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on August 1, 1989, from 9:15 a.m.–5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–15961 Filed 7–6–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324; License Nos. DPR–71 and DPR–62; EA 87–165]

Carolina Power & Light Co. (Brunswick Units 1 and 2); Order Imposing Civil Monetary Penalty

I

Carolina Power and Light Company, Raleigh, North Carolina (licensee) is the holder of Operating License Nos. DPR–71 and DPR–62 (licenses) issued by the Nuclear Regulatory Commission (Commission or NRC) on November 12, 1976, and December 27, 1974, respectively. The licenses authorize the licensee to operate the Brunswick Units 1 and 2 in accordance with the conditions specified therein.

II

NRC inspection of the licensee's activities under the licenses was conducted on July 6–10, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated May 5, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice by letter dated July 1, 1988. In its response, the licensee agreed that the deficiencies constituted violations of regulatory requirements. However, for a variety of reasons associated with the application of the NRC's "Modified Enforcement Policy Relating to 10 CFR 50.49" (Modified Policy), the licensee contended that no civil penalty should be levied.

III

After consideration of the licensee's response and the statements of fact, explanations, and argument for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support (DEDS) has determined, as set forth in the Appendix to this Order, that the violations, with the exception of the violation involving Vulkene wire in a Unit 2 motor operator, occurred as stated. The DEDS has also determined that the remaining violations still constitute a Category B problem under the Modified Policy and that the penalty proposed for this problem in the Notice of Violation and Proposed Imposition of the Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295) and 10 CFR 2.205, *It is hereby ordered that:*

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of the Enforcement, U.S. Nuclear Regulatory Commission, ATTN:

Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with copies to the Assistant General Counsel for Hearings and Enforcement, at the same address, the Regional Administrator, Region II, 101 Marietta Street NW., Atlanta, Georgia 30323, and a copy to the NRC Resident Inspector at Brunswick.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions to this Order shall be effective without further proceedings. If payments has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in section II as modified in section III, and

(b) Whether, on the basis of such a violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 26th day of June 1989.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusion

On May 5, 1988, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) to Carolina Power and Light Company (CP&L or licensee) for deficiencies relating to the environmental qualification (EQ) of electrical equipment important to safety. On June 3, 1988, CP&L requested, and was granted, a 30 day extension to respond to the Notice. By letter dated July 1, 1988, CP&L responded to the Notice by stating that CP&L has reviewed the Notice and agrees that the violations occurred, with one exception. However, the licensee disagreed with the proposed civil penalty. Principally, the licensee argues that the NRC's "Modified Enforcement Policy Relating to 10 CFR 50.49" (Modified Policy) was misapplied. The NRC's evaluation and conclusions regarding CP&L's response follow.

Restatement of the Violations

10 CFR 50.49 (d), (f) and (j), respectively, require, in part, that: (1) A list of electric equipment important to safety be prepared, and information concerning performance specifications, electrical characteristics and postulated environmental conditions for this equipment be maintained in a qualification file, (e) each item of electric important to safety shall be qualified by testing of, or experience with, identical or similar equipment, and qualifications shall include a supporting analysis to show that the equipment to be qualified is acceptable, and (3) a record of the qualification of the electrical equipment shall be maintained in a qualification file in an auditable form to permit verification that the required equipment is qualified and that the equipment meets the specified performance requirements under postulated environmental conditions.

Contrary to the above:

1. From November 30, 1985 to October 18, 1986, for Unit 1, and from June 15, 1986 to October 21, 1986, for Unit 2, the licensee did not have: (1) The Woodward speed sensors for the High Pressure Coolant Injection (HPCI) system on the list of electric equipment important to safety (Master List of qualified equipment), (2) the speed sensors for HPCI turbines tested for qualification, and (3) documentation to verify qualification of the speed sensors in an auditable form.

2. From November 30, 1985 to September 1986, for Unit 2, the licensee did not have: (1) The Vulkene wire installed by the licensee, in valve actuators required to be environmentally qualified, on the Master List of qualified equipment, (2) the wire tested for qualification, and (3) documentation to verify qualification of the wire in an auditable form.

3. From November, 30, 1985, to July 1987, for Unit 1, the licensee did not have: (1) the Whitney-Blake wire installed by the licensee, in valve actuators required to be environmentally qualified, on the Master list of qualified equipment, (2) the wire tested for qualification, and (3) documentation to verify qualification of the wire in an auditable form.

(4) From November 30, 1985 to November 21, 1986, for Units 1 and 2, the licensee did not have: (1) The control relays for the Standby Gas Treatment (SBGT) skid on the Master List of qualified equipment, (2) the relays tested for qualification, and (3) documentation to verify qualification of the relays in an auditable form.

(5) From November 30, 1985 to March 10, 1987, for Unit 1, the licensee did not have: (1) Kulka terminal blocks, for components required to be environmentally qualified, on the Master List of qualified equipment, (2) the terminal block test for qualification, and (3) documentation to verify qualification of the terminal block.

(6) From November 30, 1985 to July 7, 1987, for Unit 2, the licensee did not have: (1) Cinch terminal blocks, for components required to be environmentally qualified, on the Master List of qualified equipment (2) the terminal blocks tested for qualification, and (3) documentation to verify qualification of the terminal blocks.

(7) From November 30, 1985 to March 11, 1987, for Unit 1, the licensee did not have: (1) Unidentified teflon-type wire (used on the SBGT skid) on the Master List of qualified equipment, (2) the unidentified teflon-type wire tested for qualification, and (3) documentation to verify qualification of the unidentified teflon-type wire.

(8) From November 30, 1985 to July 1987, for Units 1 and 2, the licensee did not have: (1) Documentation to verify that qualification of the HPCI condensate float switches was not required or (2) the HPCI condensate float switches on the Master List of qualified equipment with documentation of qualification in an auditable form.

(9) From November 30, 1985 to October 1987, for Units 1 and 2, the licensee did not have documentation to verify qualification of the following items used in Limitorque Motor Operators: Allen-Bradley nylon terminal blocks, GE phenolic terminal block, and electrical butt splices. Additionally, various motor operator contined Collier PVC wire installed by the licensee for which qualification documentation was not available.

Summary of Licensee's Response

CP&L contends that the Notice fails to establish that CP&L "clearly should have known" of the violations prior to November 30, 1985. CP&L maintains that the Notice also (1) incorrectly alleges an EQ violation in the case of the Vulkene wire in the Unit 2 motor operator, (2) incorrectly classified the violations as significant, and (3) incorrectly groups the violations as an EQ Category B problem.

1. "Clearly Should Have Known" Test

CP&L contends that the NRC staff failed to specifically analyze the factors

set forth in the Modified Policy and has failed to describe in detail, for each alleged deficiency, the facts relied upon in concluding that CP&L "clearly should have known" of the deficiencies. Additionally, CP&L stated that "A mere recitation of the conclusion that the licensee clearly should have known is not sufficient."

CP&L states it is possible that NRC staff conducted a detailed inquiry. In this case, however, the licensee concludes that the Notice provides only a cursory summary of the conclusions reached. Despite that conclusion, the licensee did provide arguments to support the position that CP&L should not clearly have known of these violations. The broadest of the arguments provided was the assertion that, based on previous NRC and NRC-sponsored reviews, CP&L had a reasonable basis to believe that compliance with 10 CFR 50.49 had been achieved.

In summary, CP&L feels that the NRC failed to provide a legally sufficient factual basis for each and every "clearly should have known" finding and, therefore, cannot conclude that CP&L "clearly should have known" of the violations. Thus, CP&L has been deprived of the opportunity to respond meaningfully to the Notice.

2. The Vulkene Wire in the Unit 2 Motor Operator Replaced Prior to Operation After the Deadline

CP&L contends that the violation involving the Vulkene wire should be withdrawn as the deficiency on Unit 2, although it existed prior to the deadline, was corrected prior to Unit 2 operation after the deadline.

3. EQ Violations not Sufficiently Significant to Merit a Civil Penalty Under the Modified Policy

CP&L contends that violations 1, 2, 3, 4, 5, 6, and 8, and part of violation 9 are in a category analogous to the category described in Part III of the Modified Policy, which addresses those violations of 10 CFR 50.49 found not to be sufficently significant as to warrant a civil penalty under the Modified Policy. This contention is based on the premise that the only difference between the cited violations and the violations in the Modified Policy is that the cited violations were licensee-identified. CP&L maintains that it is inappropriate to apply escalated enforcement for each of the referenced licensee-identified violations. CP&L also maintains that, based on data available to the company, it was able to demonstrate that the components were qualified or qualifiable. CP&L also contends that the resolution to the deficiencies was performed in a time period commensurate with the time that a licensee would have had during an inspection to respond to an inspector.

Based on the above, CP&L contends that the referenced violations should be classified as not sufficiently significant for assessment of civil penalties.

4. Categorization of the Violations

As noted above, CP&L argues that only violation 7 and part of violation 9 are significant deficiencies in accordance with the Modified Policy, affecting only two components in two systems. Therefore, the licensee contends that only two deficiencies should be considered in aggregate resulting in an EQ Category C problem for which full mitigation is warranted.

5. Other Reasons Why the Civil Penalty Should Not Be Imposed

CP&L contends that the NRC is taking escalated enforcement for violations 1, 2, and 9 when the NRC is on record as saying that it would take no enforcement action for deficiencies involving Limitorque motor operator wiring qualification.

6. Summary

CP&L agrees that the deficiencies cited in the Notice with one exception constitute violations of 10 CFR 50.49. The licensee maintains, however, that due to the circumstances that apply to the specific deficiencies and following the guidance of the Modified Policy, no civil penalty should be levied for these EQ deficiencies.

NRC's Evalauation of Licensee's Response

1. NRC Evaluation of the "Clearly Should have Known" Test

Contrary to the licensee's arguments, the Notice and transmittal letter issued to CP&L contained all the necessary elements for assessing a civil penalty required by Section 234b of the Atomic Energy Act and as set forth in 10 CFR 2.205. The NRC staff, in the context of applying the Modified Policy, agrees that the licensee should be provided with sufficient information regarding the NRC staff's finding that the licensee "clearly should have known" of the unqualified equipment in order to provide the licensee with the opportunity to contest that finding. Several steps have been taken in this matter to provide the licensee with the appropriate information. First, the Modified Policy has been made available to the licensee. Second, the NRC inspection report, which has been sent to the licensee, and upon which the enforcement action is based, documents the NRC's findings from which the basis for the "clearly should have known"conclusion can be generally inferred. Third, an enforcement conference was held at which the inspection findings were discussed in depth. Finally, and most importantly, the NRC staff has articulated, in the cover letter which transmitted the Notice, the reasons why it believes the license "clearly should have known" of the EQ deficiencies. In that letter, the NRC staff highlighted the significant facts supporting the staff's conclusion. The NRC staff disagrees that the cover letter's explanation must be exhaustive and include all the facts and factors considered. The NRC staff's approach is consistent with the approach taken under the General Enforcement Policy whenever the NRC discusses the determination of the severity level of a violation or application of the escalation and mitigating factors. In such cases, the NRC staff provides the licensee with reasonable notice and a number of meaningful opportunities during the enforcement process to respond.

In the NRC staff's view, the transmittal letter provided the licensee with sufficient information regarding the "clearly should have known" test. Based on the information provided, the licensee should have assessed the items as shown below:

a. Woodward speed sensors for the High Pressure Coolant Injection (HPCI) system: The licensee clearly should have known of this deficiency because of the information contained in a report provided to the licensee in October 1985 by General Electric (NEDC–31001–1) which specified that these sensors needed to be replaced.

b. Whitney Blake wire: The licensee clearly should have known of these deficiencies. The use of qualified wire in equipment that is important to safety is a basic requirement of any environmental qualification program. In this case, the licensee installed this type of wire in valve actuators which were important to safety without verifying the wire's qualification and clearly its qualification should have been checked prior to use.

c. Standby Gas Treatment control relays and temperature switch leads: As the licensee acknowledged in its response to the Notice, more thorough design interface control or field verification would have identified these problems. The question is whether these components were either so significant or obvious that the licensee should have clearly recognized that they had not

been accounted for in the environmental qualification record of Standby Gas Treatment System. The NRC staff recognizes that the vendor, as well as the architect engineer, had extensive involvement in the development of the list of skid mounted subcomponents to be environmentally qualified. However, as discussed in the "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (Attachment 4 to NRC Bulletin 79–01B) reliance simply on a document such as an unsupported vendor certification is not considered adequate verification of qualification.

With respect to the control relays, the NRC staff concludes that these components are obviously necessary for the coperation of the system and that should have warranted early consideration in ensuring that the design control process and field verifications supported a complete record of environmental qualification. In the case of these components, it was not a question of inadequate qualification documentation, but the total lack of documentation. Clearly any knowledgeable individual with pertinent information on EQ issues should have discovered this problem because of the importance of the components and the complete lack of a qualification record.

In the case of temperature switch leads, wire is such a basic component of any electrical system that it is clear that an adequate design verification program would have discovered the total lack of documentation for this wire which was used in a portion of the electrical circuitry of the Standby Gas Treatment System. In addition, field verifications clearly should have recognized that the blue wire used on these temperature switches did not match the wire employed in other similar applications and that in turn should have caused the wire's environmental qualification record to be checked.

In neither of these cases is the NRC applying interpretations not known prior to November 30, 1985.

d. Kulka terminal blocks, Cinch terminal blocks, and various other components in Limitorque operators: As discussed in the Notice and the NRC staff's June 13, 1988 letter regarding CP&L's response to the Notice, the need to qualify terminal blocks and wire has long been recognized as a necessary element of any EQ program. The NRC staff agrees with CP&L that it has never been required that a licensee perform inspection of every component in every vendor-supplied assembly. However, the NRC does expect that a certain number of assemblies would be inspected as part of the EQ walkdowns. The scope of such inspections would be determined by the quality of qualification record available. Clearly in this case the qualification record for motor operators was not outstanding or complete enough to warrant total reliance upon it without appropriate field verification.

Had such inspections been properly performed and the information in the NRC's generic issuances, such as Information Notice (IN) 83–72, been properly utilized, to determine the types of components of particular concern, CP&L would have clearly found these unqualified components. The position CP&L has taken relative to the information that was provided in IN 83–72 is overly narrow. The fact that the IN specifically cites the discovery of a Buchanan terminal block is not extremely important. The important issue raised by the IN was the general one of unqualified components being found in equipment previously thought to be qualified.

The NRC staff has reviewed the letter Limitorque Corporation issued in response to IN 83–72 and found that the conclusion reached by Limitorque, in the last paragraph of the letter that licensees need take no action with respect to IN 83–72, is not supported by the body of the letter. Not only does the NRC staff reject the letter as the basis for a licensee not pursuing the issues raised in the IN but the staff finds that the letter in its totality supports the NRC staff's "clearly should have known" finding. Consistent with that point, the NRC found that a number of licensees had acted upon the IN after reviewing the Limitorque letter.

The NRC staff was concerned that the Limitorque letter started out apparently intent on describing an isolated problem with terminal blocks at the Midland site and then abruptly went into discussing the generic use of Buchanan 0824 terminal blocks in Westinghouse supplied equipment. The discussion of the Buchanan terminal blocks in Westinghouse equipment is, in the staff's view, significant for both plants with such equipment and those without it. Most importantly, the Midland facility did not have Westinghouse supplied equipment yet Limitorque chose to discuss this issue among a number of seemingly Midland specific issues. It is clear that the Buchanan terminal block information along with other discussion supplied in the letter about the Midland specific problems should have alerted licensees to the potential for environmental qualification deficiencies as the result of work performed not only by the vendor (Limitorque) but that performed by the nuclear steam supply system provider or the architect engineer. Therefore, it is clear that assurances from the vendor may not provide a sufficient basis for concluding that no problem existed with motor operators because changes to the motor operators may have been required or made by other organizations.

The letter then shifts back to problems characterized as Midland specific including a discussion of unidentifiable terminal blocks. That discussion in the Limitorque letter (#9 of the numbered items) does not provide adequate information to allow a knowledgeable reader to fully understand the situation including whether it was truly only a Midland problem. First, given that the Limitorque qualification tests for motor operators used only certain types of terminal blocks, the letter did not provide a basis for assuring customers that these or other types of unidentifiable terminal blocks did not exist in motor operators at other plants. Second, the letter states that the unidentifiable terminal blocks were used in low voltage control circuits and were identified and found "suitable" for their application. The letter does not answer such questions as whether the terminal blocks were ultimately identified to be of the types that had previously been used in testing, whether they were "suitable" in all possible control circuit applications at Midland as well as at other plants, and if not of a type previously tested, how the suitability discussed in the letter equated to the record of qualification required by 10 CFR 50.49.

e. HPCI Condensate Float Switches: 10 CFR 50.49(b)(2) requires that nonsafety-related electrical equipment whose failure under postulated environmental conditions could prevent satisfactory accomplishment of various safety functions be qualified under those postulated environmental conditions. Alternatively, the licensee can demonstrate by appropriate testing and analysis that the failure of the nonsafety-related electrical equipment would not prevent satisfactory accomplishment of the required safety functions of the HPCI system. In this case, it was clearly indicated on the design drawing that the HPCI float switches were powered from a safety-related power supply and as such, the failure of the float switches clearly could adversely affect the safety-related power supply. The failure of the power supply could have resulted in the HPCI system not performing its intended safety function, yet the licensee had neither qualified the float switches for the postulated environment nor provided an analysis that demonstrated

their qualification was not required. Given the explicit nature of 10 CFR 50.49(b)(2) and the fact that the switches were clearly indicated on the drawing as being powered from a safety related power supply, a knowledgeable engineer with pertinent environmental qualification information clearly should have discovered the lack of qualification documentation for the float switches.

With regard to the licensee's contention that, based on various NRC and NRC-sponsored review and audit activities conducted in the period 1980–1985, it had a reasonable basis to believe that the EQ program met applicable regulatory requirements, three points should be made. First, the licensee has not provided specific information that demonstrates that any of the specific equipment discussed in the Notice was accepted as environmentally qualified by the NRC. Second, the examination of program documents, which is largely what was accomplished by the NRC reviews and audits, could not verify proper program implementation. Such verification needed to be done by the licensee. Finally, during the period of 1980–1985, the NRC was periodically providing additional information and guidance in the EQ area to the industry. Such information and guidance clearly could have affected the validity of earlier NRC acceptance of licensee programs. It was therefore incumbent upon the licensee to ascertain whether that was in fact the case for conclusions reached about its program. In summary, the NRC staff finds that the licensee's reliance on NRC general programmatic reviews to serve as a basis for acceptance of the full EQ program, including implementation, was unreasonable given the general nature of the NRC reviews and the potential that earlier conclusions reached by the NRC may have been invalidated by more current information provided to licensees by the NRC.

It is the NRC staff's conclusion that these examples meet the "clearly should have known" test and demonstrate a Category B problem under the Modified Policy.

2. NRC Evaluation of the Use of Vulkene Wire

The NRC concludes that the licensee is correct in its assertion that the example involving the use of Vulkene wire in a Unit 2 motor operator should not be considered for enforcement under the Modified Policy. Given that the unit was shut down at the time of the deadline and the deficiency was corrected prior to operation after the deadline, use of this example is inappropriate. It should be noted that a similar problem was discovered on Unit 1 and that could have been included as an example in the proposed enforcement action.

3. NRC Evaluation of Classification of Violation as Significant

Part III of the Modified Policy is intended to address minor discrepancies and documentation problems in existing EQ files or records. For much of the equipment associated with the stated violations, the licensee did not have EQ files and construction of files for such equipment clearly constitutes more than correction of minor file deficiencies. For the remaining equipment, for which EQ files did exist, either additional testing and/or analysis beyond that permitted by Part III of the Modified Policy was required in order to establish qualification or the licensee, after providing some arguments concerning qualifiability, chose to replace the equipment and never adequately demonstrated qualification. The NRC staff does agree that the licensee was able to subsequently demonstrate qualification of the Unit 1 SGBT control relays. However, the Unit 1 relay qualification was not made until well after identification and qualification was not demonstrated for the Unit 2 relays.

4. NRC Evaluation of CP&L's Position on the Categorization of the Problem

As discussed Paragraph 3 above, the NRC staff concludes that the violations given in the Notice, with the exception of the Vulkene wire, were properly evaluated as significant. Consequently, for these remaining violations, classification as an EQ Category B problem is appropriate.

5. NRC Evaluation of CP&L's Position Regarding Limitorque Motor Operator Wiring Qualification

CP&L references SECY 87–32 in an attempt to argue this point. The recommendation of this NRC staff document was that the NRC staff should be allowed to exercise discretion and take no enforcement action for certain violations (Limitorque internal wiring). This position was subsequently endorsed by the Commission.

CP&L also references the Memorandum from James Taylor, Director of the Office of Inspection and Enforcement, to Regional Administrators, dated April 10, 1987. This memorandum states: "Violations that involve deficiencies in the qualification of internal wiring for Limitorque motor operated valves should not be processed unless significant programmatic weaknesses exist or inadequate licensee responses or corrective actions are identified."

It should first be noted that CP&L is attempting to claim that this position holds true for the speed sensor on the HPCI turbine (violation 1). This violation is not related to the issue of the internal wiring and, as such, does not warrant discussion here. Given that the NRC staff's position relating to violation 2 has been modified as discussed above the discussion below relates only to the internal wiring issue cited in violation 9.

SECY–87–32 states that discretion will be exercised for certain violations involving unqualified valve motor operator internal wiring. As noted by CP&L on page 6 of Attachment 1 to its July 1, 1988 letter, discretion would be exercised due in large part to extenuating circumstances such as misleading and inadequate vendor-supplied documentation. In this case, as stated in the Notice, the NRC staff concludes that the licensee installed the wire. The licensee in responding to the violation did not dispute that statement, and therefore the use of enforcement discretion as discussed in SECY–87–32 is inappropriate for this particular violation.

Conclusion

The NRC staff has concluded that violation 2 should be withdrawn. The NRC staff further concludes that the remaining violations constitute an EQ Category B problem and that they "clearly should have been known" to the licensee. No additional information has been provided that would alter the classification of the violation, or the imposition of the civil penalty. The Notice was issued in accordance with the regulatory requirements and the civil penalty was proposed in accordance with the Modified Policy. Therefore, the NRC concludes the imposition of the $50,000 is proper.

[FR Doc. 89–15966 Filed 7–6–89; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–483]

Union Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 47 to Facility Operating License No. NPF–30, issued to Union Electric Company, which revised the Technical Specifications for operation of the Callaway Plant, Unit 1, located in

Callaway County, Missouri. The amendment was effective as of the date of issuance.

The amendment modified the Technical Specifications to increase the allowed flow variations of the control room emergency ventilation system and reduce the control room pressurization requirement from ¼ inch water gauge to ⅛ inch water gauge.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission had made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on May 20, 1988 (53 FR 18187). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 25, 1988, and supplemented by letters dated December 28, 1988 and March 31, 1989, (2) Amendment No. 47 to License No. NPF–30, (3) the Commission's related Safety Evaluation dated June 27, 1989 and (4) the Environmental Assessment dated June 16, 1989. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW, and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251, and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 27th day of June 1989.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15967 Filed 7–6–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8714]

Cleveland Cliffs Iron Co.; Final Finding of No Significant Impact Regarding the Termination of Source Material License SUA–1352 for the Collins Draw Research and Development in Situ Leach Project Located in Campbell County, Wyoming.

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to terminate Source and Byproduct Material License SUA–1352.

2. Reasons for Final Finding of No Significant Impact

An envionmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated the restoration and decontamination efforts which took place at the project. Documents used in preparing the assessment included operational data from the Collins Draw Research and Development in situ leach operation, as well as verification samples taken by the NRC and State of Wyoming. Based on the review of the operational data and the verification sampling, the Commission has determined that no significant impact will result from the proposed action and therefore, an Environment Impact Statement is not warranted.

The following statements support the final finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. After solution mining, the licensee, using a combination of reverse osmosis, ground-water sweep, air stripping and clean water injection, conducted several episodes of restoration which partially improved ground-water quality. The utilization of an ammonium carbonate lixiviant in the A–1 and B well fields as well as the dissolution of precipitates from the production zone, continue to maintain elevated levels of chemical, metallic and radionuclide species.

Alternatives considered for removing or containing the remaining contamination included additional ground-water restoration involving recirculation with reverse osmosis treatment, ground-water sweep, open pit or underground mining of the production zone, isolation of the production zone by grout or chemical substances and oxidative destruction of residual ammonia by chlorine. Evaluation of these alternatives follows.

Additional restoration utilizing recirculation of production zone water with reverse osmosis treatment would be costly. Previous utilization of the reverse osmosis unit maintained at the site indicates that without the construction of an appropriately sized evaporation pond (estimated to cost $400,000+), such an effort would have little or no effect on the elevated ground-water parameters. The data on ground-water restoration in the A–1 well field where reverse osmosis was utilized indicates that 13 ground-water parameters are elevated. Ground-water in the B well field where reverse osmosis was not utilized, shows elevated levels of the same 13 constituents as in the A–1 well field, as well as three additional parameters. Based upon this data, the utilization of reverse osmosis restoration would probably have only minimal improvements on ground-water quality.

Ground-water sweep may cause temporary improvements in ground-water quality. However, the relative differences between water qualities in the production zone and the unmined portions of the formation indicate the circulation restoration option would not be successful to any measurable extent.

Actual mining of the production zone as well as chemically isolating the area would be extremely costly and have unacceptable environmental impacts associated with them. Furthermore, chemically isolating the production zone is not a proven technology and could result in large financial inputs with marginal success.

Oxidative destruction of residual ammonia by chlorine is technology that has not been utilized on a field scale. Due to this, its success is questionable. Additionally, the utilization of this method would lower the production zone aquifer pH and potentially increase concentrations of heavy metals, resulting in overall degradation of the existing water quality.

Due to the above restoration options and potential problems associated with their implementation, adding a chemical

reductant in the form of hydrogen sulfide to the well field was utilized as a final restoration step. This action resulted in modifying the ground-water quality to the satisfaction of the State and Federal licensing authorities.

B. Prior to mining at the Collins Draw project, baseline water quality sampling showed water quality to be high in total dissolved solids and radium. Although these concentrations were high, they did not preclude the water usage as a domestic water source; however, no domestic usage was known to exist in the area. Furthermore, no current water usage in the vicinity of the well field is known to exist.

Overall, the production zone covers approximately 0.5 acre and consists of approximately 3.6 million gallons of water in an aquifer system which covers thousands of acres and contains billions of gallons of water. Due to this, the incremental contamination caused by the Collins Draw Research and Development project is not significant when considering the overall quality and utilization of the ground water in this area. Furthermore, the current ground-water uses of stock watering and oil well development have not been precluded due to uranium recovery operations.

C. Decommissioning and decontamination of the facility are complete and no residual contamination exists. Therefore, the site will be returned to its premining land use of open range.

In accordance with 10 CFR 51.33(a), the Director of the Uranium Recovery Field Office, made the determination to issue a final finding of no significant impact. This findig, together with the environmental assessment setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC. Concurrent with this finding, the staff will terminate Source and Byproduct Material License SUA–1352.

Dated at Denver, Colorado, this 26th day of June, 1989.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Branch Chief, Uranium Recovery Field Office, Region IV.

[FR Doc. 89–15964 Filed 7–6–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–294]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Authorizing Dismantling of the Reactor and Disposition of Component Parts; Michigan State University

The Nuclear Regulatory Commission is considering issuance of an Order authorizing the Michigan State University (licensee) to dismantle the TRIGA Nuclear Reactor in East Lansing, Michigan and to dispose of the reactor components in accordance with the application dated January 20, 1989, as supplemented on May 4, 1989.

Environmental Assessment

Identification of Proposed Action

By application dated January 20, 1989, as supplemented, the licensee requested authorization to dismantle the 250 kilowatt (thermal) Michigan State University Research Reactor (MSURR), to dispose of its components parts and radioactive material, and decontaminate the facility in accordance with the proposed dismantling plan, and to terminate Facility License No. R–114. The MSURR was shut down in October 1987, and has not been operated since then. The reactor fuel has been removed from the facility and shipped to Department of Energy facilities in accordance with DOE, NRC, and DOT requirements.

Need for Proposed Action

In order to prepare the facility for unrestricted access and use, the dismantling and decontamination activities proposed by MSURR must be accomplished.

Environmental Impact of the Proposed Action

All decontamination will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The operations are calculated to result in a total radiation exposure of 9.05 person-rem to facility staff and the public.

These conclusions were based on the fact that all proposed operations are carefully planned and controlled, all contaminated components are removed, packaged, and shipped offsite, and that the radiological control procedures ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the MSURR facility, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area.

Alternative Use of Resources

The only alternative to the proposed dismantling and decontamination activities is to maintain the facility as a restricted area. This approach would include monitoring and reporting for the duration of the safe storage period. However, the facility management intends to use the area for other purposes.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. We conclude that the proposed action will not have a significant effect on the quality of the human environment.

For detailed information with respect to this proposed action, see the application for dismantling, decontamination and license termination dated January 20, 1989, as supplemented and the Safety Evaluation prepared by the staff. These documents are available for public inspection at the Commissions' Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of June 1989.

For The Nuclear Regulatory Commission.

Charles L. Miller,

Director Standardization and Non-Power Reactor Project Directorate Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15965 Filed 7–6–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 13–15, 1989 in Room P–110, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published in the **Federal Register** on June 20, 1989 and June 29, 1989.

Thursday, July 13, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report on items of current interest.

8:45 a.m.–10:15 a.m.: USI A–40, Seismic Design Criteria (Open)—The Committee will review and comment on proposed resolution of USI A–40, Seismic Design Criteria (Short Term Items).

10:30 a.m.–11:30 a.m.: Containment Performance Improvement Program (Open)—A briefing will be presented regarding the status of this program.

11:30 a.m.–12:00 Noon: Future ACRS Activities (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1:00 p.m.–2:45 p.m.: Reactor Pressure Vessel Integrity (Open/Closed)—A briefing and discussion will be held regarding the status of activities including related safety research to operating nuclear power plant reactor pressure vessels.

Portions of this session will be closed as necessary to discuss Proprietary Information regarding this matter.

3:00 p.m.–4:45 p.m.: Fire Risk Scoping Study (Open)—The Committee will review and report regarding the staff's proposed plans to implement the recommendations resulting from the Fire Risk Scoping Study.

4:45 p.m.–5:45 p.m.: ACRS Subcommittee Activities (Open)—The Committee will discuss the status of assigned ACRS subcommittee activities including nuclear power plant valve performance and reliability, consideration of a proposed power level increase for the Indian Point Nuclear Power Station, Unit 2, and review of ACRS Bylaws.

Friday, July 14, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD

8:30 a.m.–10:00 a.m.: Multiple System Responses Program (Open)—A briefing and discussion will be held regarding the status of this program.

10:15 a.m.–12:15 p.m.: Comanche Peak Nuclear Station, Units 1 and 2 (Open)—The Committee will hear a briefing by the NRC staff regarding proposed issuance of an operating license for this facility.

1:15 p.m.–2:15 p.m.: Human Factors (Open)—A briefing and discussion will be held regarding the Chernobyl "spin-off" study.

2:30 p.m.–4:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss ACRS reports regarding topics considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information regarding this matter.

4:30 p.m.–5:00 p.m.: Nomination of ACRS Member (Open/Closed)—The Committee will discuss the status and qualifications of candidates nominated for appointment to the ACRS.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Saturday, July 15, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

1:00 p.m.–2:30 p.m.: Miscellaneous (Open)—The Committee will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presenterd by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub.L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6) and Proprietary Information applicable to the matters being discussed (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 a.m. and 5:00 p.m.

Date: June 30, 1989.

John C. Hoyle,

Committee Management Officer.

[FR Doc. 89–16029 Filed 7–6–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–24911]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 29, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 24, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or,

in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified or any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation (70–7119)

Entergy Corporation ("Entergy") (formerly Middle South Utilities, Inc.), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed a post-effective amendment to its declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

By orders dated May 28, 1986 and July 18, 1988 (HCAR Nos. 24107 and 24679, respectively) Entergy was authorized to guarantee certain obligations of its subsidiary service company, Entergy Services, Inc. ("Services") (formerly MSU System Services, Inc.), in connection with the leasing by Services of an IBM 3090 computer system and related equipment for use at Services' data processing center in Gretna, Louisiana. The computer system is leased from Comdisco, Inc., a nonassociate company, under a Master Lease Agreement, dated May 9, 1980, and four separate schedules thereto, for an aggregate monthly rental payment of $346,566 through September 30, 1991. Services has now accepted an offer from Comdisco to extend the lease of the computer system and related equipment for a new 36-month term, effective July 1, 1989, at a monthly rental payment of $312,000. Entergy requests authorization to guarantee the performance by Services of its computer lease obligations pursuant to these revised arrangements, without recourse to Servcies first being required.

Northeast Utilities, et al. (70–7422)

Northeast Utilities ("Northeast"), 170 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, and its wholly owned subsidiary companies, The Connecticut Light and Power Company ("CL&P"), 107 Selden Street, Berlin, Connecticut 06037 and Western Massachusetts Electric Company ("WMECO"), 170 Brush Hill Avenue, West Springfield, Massachusetts 01089, have filed a post-effective amendment to the declaration filed by CL&P and WMECO pursuant to sections 6 and 7 of the Act.

By prior order, dated September 2, 1987 (HCAR No. 24454), CL&P and WMECO were authorized to enter into a Credit Agreement ("Credit Agreement") for a term of three years with a right for either CL&P or WMECO to renew on a year-by-year basis, under which CL&P and WMECO were permitted to borrow and reborrow, at any time and from time-to-time, up to an aggregate of $350 million from a syndicate of commercial banks for which Chemical Bank acts as agent, with $350 million available to CL&P and $105 million to WMECO.

CL&P, WMECO, and Northeast are now seeking authorization to enter into an Amendment and Restatement of the Credit Agreement under which Northeast would be permitted to borrow up to $100 million, provided that the sum of the borrowings of CL&P, WMECO and Northeast may not exceed $350 million.

Eastern Utilities Associates et al. (70–7511)

Eastern Utilites Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and its subsidiary, Eastern Edicon Company ("Eastern Edison"), 110 Mulbery Street, Brockton, Massachusetts 02403, have filed a post-effective amendment to their application-declaration pursuant to Section 6, 7, 9, 10 and 12(c) of the Act and Rules 40, 42 and 50 thereunder.

By Commission order dated September 16, 1988 (HCAR No. 24717) Eastern Edison was authorized, among other things, to issue and sell from time to time during the period ending May 31, 1990 the following securities:

(a) Up to 200,000 shares of a new class of Preferred Stock, of Eastern Edison, par value $100 per share ("Additional Preferred Stock");

(b) Up to $75,000,000 aggregate principal amount of one or more series of First Mortgage and Collateral Trust Bonds of Eastern Edison ("Additional Bonds").

Jurisdiction was reserved over the issuance and sale through May 31, 1990 of up to 1,500,000 common shares of EUA, par value $5 per share ("Additional Shares").

The Additional Shares will be sold by the competitive bidding procedures of Rule 50 of the Act, as modified by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22623). Should market conditions make it impractical to sell the Additional Shares in compliance with Rule 50 of the Act, as modified, EUA may request an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5).

By post-effective amendment, EUA has completed the record with respect to the use of proceeds from the issuance and sale of the Additional Shares. The aggregate proceeds from the sale or sales of the Additional Shares will be applied to any or all of the following: (i) To repay short-term bank borrowings of EUA; (ii) to provide funds for, or to repay short-term bank borrowings or other debt incurred in connection with EUA's offers to purchase all of the outstanding common stock of UNITIL Corporation and/or Fitchburg Gas and Electric Light Company; (iii) to pay underwriting costs and other expenses of the financing and (iv) for other corporate purposes.

The proceeds or any part thereof of the Additional Shares may be temporarily invested in securities meeting the requirements of section 9(c)(1) of the Act of Rule 40(a)(1) or (2) thereunder.

UNITIL Corporation (70–7628)

Unitil Corporation ("UNITIL"), 216 Epping Road, Exeter, New Hampshire 03833–1115, an exempt public-utility holding company, has filed an application with the Commission pursuant to sections 9(a)(2), 10 and 11(b)(1) of the Act.

UNITIL was incorporated on September 7, 1984 and has two retail utility subsidiaries, Concord Electric Company and Exeter & Hampton Electric Company, both New Hampshire electric utility companies. Fitchburg Gas and Electric Company ("Fitchburg"), a Massachusetts public utility company, serves both electric and gas customers. UMC Electric Company, Inc. ("UMC Electric"), a subsidiary of UNITIL, was incorporated as an electric utility company on March 1, 1989 for the purpose of effecting the proposed transaction. Upon the receipt of certain approvals of the Massachusetts Department of Public Utilities, all of the 1,000 shares of common stock of UMC Electric will be issued to UNITIL for $1,000.

UNITIL proposes to enter into a transaction whereby it would combine its operations with Fitchburg and, pursuant thereto, would become the owner of all of the outstanding shares of common stock of Fitchburg. UNITIL, Fitchburg and UMC Electric have entered into an Agreement and Plan of Merger dated March 1, 1989 stating that: (1) UMC Electric will merge with and into Fitchburg with Fitchburg as the surviving corporation ("Surviving Corporation"); (2) all of the common stock of UMC Electric will be converted into common stock of the Surviving Corporation; (3) UNITIL will pay to its shareholders of record prior to the effective time of the merger an 11% stock

dividend; and (4) each share of Fitchburg common stock outstanding immediately prior to the effective time of the merger will be converted into and exchangeable for one share of common stock of UNITIL after the 11% stock dividend referred to in (3) above. Fitchburg will continue as a gas and electric utility company and its electric utility operations will represent approximately one-third of the new UNITIL system with respect to customers and kilowatt-hour sales.

The proposed merger is conditioned upon, among other things: (i) The affirmative vote of the holders of two-thirds of the outstanding shares of Fitchburg common stock and preferred stock, voting together as a single class; (ii) the affirmative vote of the holders of two-thirds of the outstanding Fitchburg common stock; and (iii) the affirmative vote of a majority of the shares of UNITIL common stock voting on the proposal to approve the issuance of the shares of UNITIL common stock into which the shares of Fitchburg common stock will be converted.

Upon consummation of the proposed transaction, UNITIL will no longer be eligible for exemption under the Act. It therefore intends to file a notification of registration pursuant to Rule 1 under the Act prior to the consummation of the proposed transaction and to file a registration statement and any other required documentation within 90 days thereafter.

Columbus Southern Power Company (70–7631)

Columbus Southern Power Company ("CSPC"), 215 N. Front Street, Columbus, Ohio, 43215, an electric public utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to Section 12(d) of the Act and Rule 44 thereunder.

CSPC proposes to sell to its commercial customer, Ashland Chemical Company ("Ashland"), certain primary distribution equipment and other related equipment ("Facilities") located in Dublin, Ohio, for a purchase price of $109,691 in cash. The Facilities are situated on real property owned by Ashland in Dublin, Ohio and are now employed by CSPC for providing service exclusively to Ashland. It is stated that the Facilities are not adaptable, at that location, for use in serving any other customer.

Louisiana Power and Light Company (70–7653)

Louisiana Power and Light Company ("LP&L"), 317 Baronne Street, New Orleans, Louisiana 70112, a wholly owned subsidiary of Entergy Corporation, formerly known as Middle South Utilities, Inc., a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(d) of the Act and Rules 44 and 50(a)(5) thereunder.

LP&L proposes to sell and leaseback approximately 20% of its 100% undivided ownership interest ("Undivided Interest") in Unit 3 of the Waterford Steam Electric Generating Station ("Waterford 3"). LP&L plans to enter into one or more Participation Agreements providing for the sale of its Undivided Interest to a trustee ("Owner Trustee/Lessor") acting on behalf of an equity investor or investors ("Owner Participants") and the simultaneous lease of such Undivided Interest pursuant to separate net lease agreements ("Lease") to be entered into with the Owner Trustee/Lessor which will not exceed a term of approximately 27½ years. LP&L anticipates that the implicit interest rate of the lease will not be greater than approximately 12%. LP&L expects that the maximum aggregate fair market value of its Undivided Interest in Waterford 3 will not exceed $515 million. It is proposed that 10–25% of the aggregate cost will be provided by the Owner Participants and 75–90% of the cost will be borrowed by the Owner Trustee/Lessor. Subject to certain conditions, LP&L will have the right to renew the lease for successive terms for the useful life of Waterford 3 at rentals as will be specified in the lease. Such rentals would in no case exceed a fair market rental value.

LP&L proposes to use the net proceeds from the sale of the Undivided Interest (1) to redeem, in whole or in part, prior to their respective maturities, one or more series of LP&L's outstanding first mortgage bonds at par, pursuant to the provisions of LP&L's Mortgage and Deed of Trust, (2) to pay the costs of LP&L continuing construction program and (3) for other corporate purposes.

In connection with the equity funding of the proposed transaction, letters of credit ("Letter of Credit") will be provided by one or more banks or other financial institutions. Upon the occurrence of certain adverse operating events with respect to Waterford 3, the Owner Participants would be entitled to draw on the Letter of Credit in amounts equal to amounts owed by LP&L under the Lease. LP&L will become obligated, pursuant to a Reimbursement Agreement to be entered into between LP&L and the Letter of Credit banks, to repay the amount drawn under the Letter of Credit.

With respect to that portion of the cost to be borrowed, long-term debt financing may be provided through the issuance by the Owner Trustee/Lessor, pursuant to a trust indenture, of one or more series of long-term notes or bonds ("Long-term Notes") publicly or privately placed. The Long-term Notes will be non-recourse and will be secured by the Owner Trustee/Lessor's interest in Waterford 3 and certain of the Owner Trustee/Lessor's rights under the lease. In the event of a public offering, long-term debt financing may be provided by the issuance of the Long-term Notes to a special purpose corporation ("Funding Corporation"), unaffiliated with LP&L or any of its affiliates. The Funding Corporations's acquisition of the Long-term Notes will be funded, pursuant to a collateral trust indenture, through the issuance of long-term collateral trust notes ("Collateral Trust Notes") publicly placed and secured by the Long-term Notes.

Interim financing may be provided by one or more domestic or foreign financial institutions ("Interim Lenders"), who will make non-recourse loans to the Owner Trustee/Lessor, secured in the same manner as the Long-term Notes. Interim financing will be provided in return for non-recourse notes ("Interim Notes") of the Lessor. Any Interim Notes will be refunded after the closing of the sale of the Undivided Interest with the proceeds of the issuance of the Long-term Notes (and, if applicable, the Collateral Trust Notes) as described above. (Hereinafter, the Long-term Notes, the Collateral Trust Notes and the Interim Notes will be referred to as the "Notes").

Upon the occurrence of certain loss events (as defined in the Lease), LP&L will be obligated to pay to the Owner Trustee/Lessor a Casualty Value or Special Casualty Value (as defined in the Lease) reduced by the unpaid principal amount of the Notes and thereupon either assume full payment responsibility for the Notes, or, if such assumption is precluded, accept transfer of the Owner Participant's interest in the Owner Trust. Upon the occurrence of default events (as defined in the Lease), LP&L may also assume the Notes or the Owner Participant's interest after the Owner Participant draws on the Letter of Credit.

LP&L has requested an exception from the competitive bidding requirements of Rule 50 of the Act pursuant to Rule 50(a)(5) in order to negotiate and privately place the Notes. It may do so.

Eastern Utilities Associates (70–7655)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered public-utility holding

company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 51 thereunder.

EUA proposes to acquire Fitchburg Gas and Electric Light Company ("Fitchburg"), a Massachusetts corporation and a public-utility company, and UNITIL Corporation ("UNITIL"), a New Hampshire corporation and an exempt holding company under the Act. On April 24, 1989, EUA commenced separate cash tender offers to acquire all of the outstanding common stock of Fitchburg and all of the outstanding common stock of UNITIL. In each case the common stock of the company is its only voting security. EUA is offering $36 for each outstanding share of Fitchburg common stock and $40 for each outstanding share of UNITIL common stock. EUA intends the tender offers to be open through July 7, 1989, unless extended by EUA. EUA anticipates that it will extend the offers, as required, to obtain the regulatory approvals necessary to consummate the offers.

The Fitchburg acquisition and the UNITIL acquisition are each conditioned upon, among other things: (i) There being validly tendered to EUA, in the case of Fitchburg, at least two-thirds of the outstanding common stock and, in the case of UNITIL, a majority of the outstanding common stock; (ii) all necessary regulatory approvals having been obtained; (iii) the proposed Fitchburg-UNITIL merger not being consummated, (The proposed merger was announced on March 1, 1989 and is presently the subject of S.E.C. File No. 70–7628.); and (iv) the maintenance of EUA's lines of credit. In addition, it is a condition to the consummation of the Fitchburg tender offer that voting rights for all Fitchburg shares acquired by EUA which would otherwise be denied voting rights under the Massachusetts "control share" acquisition statute be authorized by the stockholders at a special meeting, or that EUA be satisfied that the provisions of the statute are inapplicable to it and to the Fitchburg transactions. Neither the completion of the Fitchburg tender offer nor the completion of the UNITIL tender offer is conditioned upon completion of the other.

EUA estimates that the acquisition price for all of the Fitchburg common stock and all of the UNITIL common stock together with expenses of such acquisitions will approximate $77 million. EUA proposes to finance the acquisitions by borrowings under a $75 million unsecured credit agreement with The Bank of New York ("Credit Agreement"), supplemented, if necessary, (1) by short-term borrowings not exceeding $5 million under EUA's existing bank lines of credit or (2) with the proceeds of one or more public offerings of common shares of EUA if such a public offering is completed before the proposed acquisitions are consummated (In S.E.C. File No. 70–7511 EUA has requested authorization to issue and sell up to 1,500,000 shares of common stock through May 31, 1990.)

EUA expects that funds for the repayment of such borrowings made under the Credit Agreement and under the existing credit lines will be provided by a combination of the following sources: internally generated cash; EUA's dividend reinvestment plan and its employees' savings plan; application of cash generated by the above-mentioned public offering or offerings of additional EUA common shares; and a sale of Fitchburg's gas distribution properties. To effectuate compliance with section 11(b)(1) of the Act, EUA will file a plan under section 11(e) of the Act for the disposition of Fitchburg's gas distribution properties within two years following the date of the acquisition by EUA of all of the common stock of Fitchburg.

EUA proposes to seek, in a second phase of these acquisitions, to acquire the remainder of the common stock of each company through a cash-out merger for the same price as that paid in the tender offer, $36 per share for Fitchburg common stock and $40 per share for UNITIL common stock. To facilitate the mergers, EUA proposes to acquire all of the capital stock (a single share) of each of two corporations ("Merger Sub") to be organized, one a Massachusetts corporation for Fitchburg's merger and the other a New Hampshire corporation for UNITIL's merger. EUA, by voting the shares acquired pursuant to the tender offers, will cause each of the Merger Subs to be merged with and into Fitchburg or UNITIL, whereupon the single share of capital stock of each Merger Sub will be converted into a number of shares of common stock of Fitchburg or UNITIL equal to the number of shares of such common stock as are outstanding and owned by any holder of record other than EUA. The shares of common stock so held by other holders, other than those who exercise dissenter's rights, will be converted into the right to receive an amount in cash equal to the tender offer price. Each company will thus become a wholly owned subsidiary of EUA. EUA expects that UNITIL will ultimately be eliminated in order to conform to the requirements of the Act. In consummation of either or both of these cash-out mergers were to become impossible or inadvisable for any reason, EUA would consider filing a plan under section 11(e) of the Act for the purpose of eliminating the minority interests in common stock of Fitchburg and UNITIL.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–16000 Filed 7–6–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 29, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Empresa Nacional De Electricidal, S.A.
American Depositary Receipts, No Par Value (File No. 7–4661)

Putnam Intermediate Government Income Trust
Common Stock, No Par Value (File No. 7–4662)

Kaufman & Broad Home, Inc.
Common Stock, $.10 Par Value (File No. 7–4663)

Itel Corporation
Common Stock, $1.00 Par Value (File No. 7–4664)

Blockbuster Entertainment Corporation
Common Stock, $.10 Par Value (File No. 7–4665)

Briggs & Stratton Corporation
Common Stock, $3.00 Par Value (File No. 7–4666)

Ferro Corporation
Common Stock, $1.00 Par Value (File No. 7–46647)

Century Communications Corporation
Class A Common Stock, $.01 Par Value (File No. 7–4668)

Jan Bell Marketing, Inc.
Common Stock, $.0001 Par Value (File No. 7–4669)

O'Brien Energy Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–4670)

Telephone & Data Systems, Inc.
Common Stock, $1.00 Par Value (File No. 7–4671)

Americus Trust for AT&T
Common Shares, Series 2—Units, No Par Value (File No. 7–4672)

Americus Trust for AT&T
Common Shares, Series 2—Score, No Par Value (File No. 7–4673)
Americus Trust for AT&T
Common Shares, Series 2—Prime, No Par Value (File No. 7–4674)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 21, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–16041 Filed 7–6–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

June 28, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Benetton Group S.P.A.
American Depositary Shares (File No. 7–4653)
Capital Housing & Mortgage Partners Inc.
Common Stock, $.01 Par Value (File No. 7–4654)
Magnetek, Inc.
Common Stock, $0.01 Par Value (File No. 7–4655)
CML Group Inc,
Common Stock, $0.10 Par Value (File No. 7–4656)
Network Equipment Technologies Inc.
Common Stock, $.01 Par Value (File No. 7–4657)
Wierton Steel Corp.
Common Stock, $.01 Par Value (File No. 7–4658)
CRS Sirrine, Inc.
Common Stock, $1 Par Value (File No. 7–4659)
Total System Services, Inc.
Common Stock, $.10 Par Value (File No. 7–4660)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 20, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlised trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–16042 Filed 7–6–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1116]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

SUMMARY: In order to determine the adverse impact (if any) of Foreign Service selection procedures, and to determine whether the candidates selected are representative of the population of the United States, it is necessary to collect the information from applicants on the registration form. This information is also used to determine the focus of the Department's recruitment effort. The following summarizes the information collection proposal submitted to OMB:

Type of request—Extension
Originating office—Bureau of Personnel
Title of information collection—Registration/Applicant Record Form—Foreign Service Written Examination.
Form number—DSP–24
Frequency—Annual
Respondents—Applicants for the Foreign Service.
Estimated number of respondents—26,000
Average hours per response—15 minutes
Total estimated burden hours—6,500

Section 3504(h) of Pub. L. 96–511 does not apply.

Additional Information or Comments: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) John Harrigan (202) 395–7340.

Date: June 7, 1989.

Sheldon J. Krys,

Assistant Secretary for Administration and Information Management.

[FR Doc. 89–15962 Filed 7–6–89; 8:45 am]

BILLING CODE 4710–24–M

Bureau of Diplomatic Security

[Public Notice 1115]

Anti-Terrorism Assistance Training

In accordance with Office of Management and Budget Circular No. A–102, dated March 3, 1988, the Department of State hereby gives notice of intention to establish a cooperative agreement for purposes of facilitating the accomplishment of the objectives of 22 U.S.C. 2349aa, et seq. Under this authority, assistance may be furnished to foreign law enforcement personnel to enhance their ability to deter terrorists and terrorist groups from engaging in international terrorist acts. The proposed agreement will encompass crisis response team training under the referenced authority.

The Department of State has identified the City of Charleston, South Carolina Police Department as having the necessary capabilities to conduct the training contemplated by this agreement. This agreement addresses a one-time requirement, and contemplates total funding of under $25,000. Training materials provided by the City of Charleston and consumed in the training will be reimbursed by the Department of State. Training materials for the

participants provided by the City of Charleston and not consumed during the training, will be reimbursed by the Department of State, and will be granted to the participants.

If a similar need is identified in the future, the Department will entertain consideration of additional sources. Public comment on this intended action may be submitted within 20 days after the date of the **Federal Register** in which this notice appears, addressed to David Epstein, Office of Counterterrorism Programs (DS/CTP/ATA), SA–22, U.S. Department of State, Washington, DC 20520. Tel. (202)673–3890.

Dated: June 27, 1989.

Alan Golacinski,

Acting Deputy Assistant Secretary for Policy and Counterterrorism.

[FR Doc. 89–15963 Filed 7–6–89; 8:45 am]

BILLING CODE 9710–24–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. 22; Notice 89–5]

Standard Time Zone Boundaries; Operating Exception for the Burlington Northern Railroad

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Operating exception.

SUMMARY: The Burlington Northern Railroad is granted an exception from the standard time of the time zones created by Congress. The exception permits operation under mountain time from Troy, Montana to Boyer, Idaho despite the fact that the Idaho portion of the track is in the Pacific time zone. It does not, however, permit the railroad in its public schedule and notices to show the area as being in other than the Pacific time zone.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel (C–50), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–9306.

SUPPLEMENTARY INFORMATION: Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. He also has authority (delegated to the General Counsel) to grant to a railroad an exception from the time zones to permit for internal purposes only operation of a railroad line on one time, despite the fact that it crosses a time zone boundary. When there is less confusion, railroad operations are less harzardous and more efficient.

The Request

The Burlington Northern Railroad Company (BN) has formally requested that it be granted an operating exception permitting internal operation of its line between Troy, Montana, and Boyer, Idaho, (a distance of approximately 65 miles) on mountain time. This railroad line is currently bisected by the time zone boundary between mountain and Pacific time at the state border. Control of trains on this line is now in a single dispactching territory and under the control of one dispatching office, which is located in the mountain time zone. The railroad stated that operating in two time zones is hazardous and inefficient. Granting the exemption would lessen potential confusion and would allow all the activities of the dispatching office in question to operate on one time. Burlington Northern, therefore, asked DOT to grant an operational exception that would move the existing operational time zone boundary westward to the west switch at Boyer, Idaho. BN noted that although Amtrak trains operate on the line, it should have no impact on Amtrak operations since Amtrak operations on the line are controlled by the BN dispatcher.

Decision

Time zone boundaries were created in the United States by the railroads about a hundred years ago to reduce the hazards resulting from confusion over time zone boundaries and to improve scheduling. For example, when two trains use the same track, one must be put onto a siding to let the other pass. Knowing what time each train is to reach a certain point is therefore necessary for safety. DOT's experience indicates that confusion about the precise time of train orders and similar railroad directives can cause hazardous conditions. The exception is therefore granted. This exception does not, however, permit the railroad in its public schedule and notices to show the area as being in other than the mountain time zone. The grant of the exception does not affect the public since it only affects internal operations of the railroad.

Authority: Act of March 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–64; 49 CFR 1.57(b).

Issued in Washington, DC, on June 29, 1989.

Phillip D. Brady,

General Counsel.

[FR Doc. 89–15918 Filed 7–6–89; 8:45 am]

BILLING CODE 9910–62–M

Research and Special Programs Administration

[Docket No. 89–2W; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Grant of Waiver; Tennessee Gas Pipeline Co.

The Tennessee Gas Pipeline Company (Tennessee) petitioned the Office of Pipeline Safety for a waiver from compliance with 49 CFR 192.553(d), which prohibits, when uprating a pipeline, the establishment of a maximum allowable operating pressure (MAOP) greater than would be permitted for a new pipeline segment constructed of the same materials in the same location. To accommodate additional gas from TransCanada Pipelines, Ltd., Tennessee requested a waiver to permit the MAOP of eight pipeline segments to be uprated from 760 to 877 psig. The eight segments are all in Class 3 locations, which are generally characterized as areas with 46 or more occupied buildings per mile of pipeline (see § 192.5). The segments are located in Erie and Niagara Counties, New York, and range from 241 to 3,274 feet in length. They are shown on drawings TO–E11–230B–100–2A, 3, 3A, 5, and 8, which are available in the docket.

The eight segments are part of Tennessee's 20-inch Niagara Spur, which began operation in 1959. The MAOP of the Niagara Spur is 760 psig, established in 1970 under § 192.619. In 1987 the entire pipeline was hydrostatically tested to slightly more than 90 percent of the specified minimum yield strength (SMYS) of the pipe. This test and certain other steps made all but the eight segments of the line eligible for operation at 877 psig. Because they were in Class 3 locations, §192.553(d) precluded operation of the eight segments at 877 psig. Since the 1987 pressure test, two additional segments have changed to Class 3, but because they had previously been tested to more than 90 percent of SMYS and were eligible to operate at 877 psig, under § 192.611(a) they may operate at that pressure.

In response to this petition, the Office of Pipeline Safety (OPS) issued Notice 1 of this proceeding, proposing to grant the requested waiver and inviting interested parties to comment (54 FR 26001; May 9, 1989). In that notice, OPS

explained that granting the waiver would not affect safety because the eight Class 3 segments are not materially different with respect to design, construction, test, operation, maintenance, and leak history from the two other Class 3 segments that may operate at 877 psig.

Comments were received from seven pipeline operators and one industry trade association, each of whom endorsed the petition and recommended granting the waiver.

For the reasons set forth above and in Notice 1 of this proceeding, OPS, by this order, finds that granting the requested waiver would not be inconsistent with gas pipeline safety. Accordingly, effective immediately, Tennessee is granted a waiver from compliance with § 192.553(d) regarding the eight segments of the Niagara Spur described above for the purpose of uprating to 877 psig.

(49 App. U.S. 1672(d); 49 CFR 1.53, and Appendix A of Part 106)

Issued in Washington, DC on June 30, 1989.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 89-15989 Filed 7-6-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 30, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0001
Form Number: 7509
Type of Review: Revision
Title: Air Cargo Manifest
Description: The CF 7509 is the source of information that provides for the accountability, integrity, and security of goods in air commerce that are imported into the United States.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 150
Estimated Burden Hours Per Response/ Recordkeeping: 34 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/ Reporting Burden: 116,586 hours
OMB Number: 1515-0104
Form Number: None
Type of Review: Extension
Title: Declaration of Ultimate Consignee that Articles Were Exported for Temporary Scientific or Educational Purposes
Description: This information in the declaration is needed to insure duty free entry of scientific and educational materials which have been exported for scientific and educational purposes.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 55
Estimated Burden Hours Per Response/ Recordkeeping: 25 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/ Reporting Burden: 41 hours
Clearance Officer: Dennis Dore, (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-15951 Filed 7-6-89; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 30, 1989.

The Department of Treasury has submitted the following public information collection requirements(s) to OMB for review and clearance under the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8803
Type of Review: New Collection
Title: Alternative Minimum Tax for Minor Children Subject to Section 59(j)
Description: Form 8803 is used to figure alternative minimum tax for children under age 14 with investment income of over $1,000 who also have adjustment or tax preference items.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 100
Estimated Burden Hours Per Response:
Recordkeeping: 13 minutes
Leaning about the law or the form: 5 minutes
Preparing the form: 26 minutes
Copying, assembling, and sending the form to IRS: 17 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 104 hours
OMB Number: 1545-0227
Form Number: 6251
Type of Review: Revision
Title: Alternative Minimum Tax—Individuals
Description: Form 6251 is used by individuals having adjustments or tax preference items or a taxable income above certain exemption amount together with credits against their regular tax. The form provides a computation of the alternative minimum tax which is added to tax liability. The infomration is needed to see whether taxpayers are complying with the law.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 118,300
Estimated Burden Hours Per Response:
Recordkeeping: 2 hours, 17 minutes
Leaning about the law or the form: 16 minutes
Preparing the form: 1 hour, 11 minutes
Copying, assembling, and sending the form to IRS: 17 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 610,428 hours
OMB Number: 1545-0773
Form Number: None
Type of Review: Revision
Title: Notice Required of Executor or Reciever
Description: Internal Revnue Code section 6036 requires executors or receivers to advise the district director of their appointment or authorization to act. This information is necessary so that the IRS will know of the proceedings and who to contact for delinquent returns or taxes.
Respondents: Individuals or households

Estimated Number of Respondents: 50,000

Estimated Burden Hours Per Response: 15 minutes

Frequency of Response: Nonrecurring

Estimated Total Reporting Burden: 12,500 hours

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–15952 Filed 7–6–89; 8:45 am]

BILLING CODE 4810–25–M

Office of the Secretary

[Supp. to Dept. Circular—Public Debt Series—No. 17–89]

Treasury Notes, Series AB–1991

Washington, June 28, 1989.

The Secretary announced on June 27, 1989, that the interest rate on the notes designated Series AB–1991, described in Department Circular—Public Debt Series—No. 17–89 dated June 22, 1989, will be 8¼ percent. Interest on the notes will be payable at the rate of 8¼ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89–16021 Filed 7–6–89; 8:45 am]

BILLING CODE 4810–40–M

[Supp. to Dept. Circular—Public Debt Series—No. 18–89]

Treasury Notes, Series P–1993

Washington, June 29, 1989.

The Secretary announced on June 28, 1989, that the interest rate on the notes designated Series P–1993, described in Department Circular—Public Debt Series—No. 18–89 dated June 22, 1989, will be 8⅛ percent. Interest on the notes will be payable at the rate of 8⅛ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89–16022 Filed 7–6–89; 8:45 am]

BILLING CODE 4810–40–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 129
Friday, July 7, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, July 12, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 3, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89–16062 Filed 7–5–89; 9:54 am]
BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 54, No. 129
Friday, July 7, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-088]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

Correction

In notice document 89-14107 beginning on page 25312 in the issue of Wednesday, June 14, 1989, make the following corrections:

On page 25312, in the table, in the third column, in the 10th entry, "multocide" should read "multocida".

On the same page, in the same table, in the same column, in the 15th entry, in the first line, "aureau" should read "aureus".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173 and 176

[Docket No. HM-126C; Amdt. Nos. 171-102, 172-116, 173-213, 176-28]

Emergency Response Communication Standards

Correction

In rule document 89-15190 beginning on page 27138 in the issue of Tuesday, June 27, 1989, make the following corrections:

1. On page 27138, in the 2nd column, in the 1st complete paragraph, in the 16th line, "(MDSD)" should read "(MSDS)".

2. On the same page, in the same column, in the last complete paragraph, in the seventh line, "(53 FR 31486)" should read "(52 FR 31486)".

3. On page 27141, in the first column, in the second line, "Transportation" should read "Transport".

4. On page 27142, in the first column, in the second complete paragraph, in the sixth line, "RSPAaagrees" should read "RSPA agrees".

5. On page 27143, in the third column, under **IV. Review by Sections**, in the third paragraph, in the second line, "added" was misspelled.

6. On the same page, in the third column, under **IV. Review by Sections**, in the fourth paragraph, "§ 172.202" should read "§ 172.201".

7. On page 27144, in the first column, in the third complete paragraph, in the fourth line, "in" should read "on".

§ 172.203 [Corrected]

8. On the same page, in the third column, in § 172.203(k), in the sixth line, "paragraph (R)(3)" should read "paragraph (k)(3)".

§ 172.600 [Corrected]

9. On page 27145, in the third column, in § 172.600(c)(1), in the fourth line, "and" should read "the".

10. On page 27146, in the second column, in the § 172.602(c)(2), in the last line, "hazardous" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 178

[Docket Nos. HM-183, 183A; Amdt. Nos. 107-20, 171-100, 172-115, 173-212, 176-27, 177-71, 178-89, 180-2]

RIN2137-AA42

Requirements for Cargo Tanks

Correction

In rule document 89-13086 beginning on page 24982 in the issue of Monday, June 12, 1989, make the following corrections:

On page 25031, in § 178.348-2, in Table II, the second and third lines in the first column, and the corresponding entries in all succeeding columns, should be removed.

BILLING CODE 1505-01-D

federal register

Friday
July 7, 1989

Part II

Department of the Treasury

Fiscal Service

31 CFR Part 344

United States Treasury Certificates of Indebtedness, Notes, Bonds, and Demand Deposit United States Treasury Certificates of Indebtedness; State and Local Government Series; Final Rule and Notice

DEPARTMENT OF THE TREASURY

Fiscal Service

[Department of the Treasury Circular, Public Debt Series No. 3-72, Third Revision]

31 CFR Part 344

Bureau of the Public Debt; United States Treasury Certificates of Indebtedness, Treasury Notes, and Treasury Bonds, State and Local Government Series

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury hereby publishes, as a final rule, regulations governing United States Treasury Certificates of Indebtedness, Notes, and Bonds of the State and Local Government Series. These securities are available for purchase, as provided in this offering, by State and local governments and certain other entities with proceeds (or amounts treated as proceeds) which are subject to yield restrictions or arbitrage rebate requirements under the Internal Revenue Code. The securities are characterized in the regulations as time deposit, demand deposit, and special zero interest.

EFFECTIVE DATE: The regulations are effective September 1, 1989, except for Subpart C, "Demand Deposit Securities" (§§ 344.6 through 344.9), which is effective August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Dyson, Attorney-Advisor (202-376-4320), or Margaret Marquette, Attorney-Advisor (202-447-9859).

SUPPLEMENTARY INFORMATION: The regulations finalize the interim rule on this subject published in the **Federal Register** on December 31, 1986, at 51 FR 47400. The regulations are a revision of the proposed rule published in the **Federal Register** on August 29, 1980, at 45 FR 57747.

Subpart A—General Information

Provisions included in the general information section apply to time deposit, demand deposit, and special zero interest State and Local Government Series securities. Changes from the 1980 regulations are as follows:

(1) Section 344.0(b)—The definition of the term "government body" is expanded to include any entity that holds funds which are subject to the arbitrage provisions of the Internal Revenue Code.

(2) Section 344.1(d)—The term "selected" has been added to provide for a possible change in the way subscriptions are processed by the Federal Reserve Banks.

(3) Section 344.1(g)—The Department reserves the right to make special provisions relating to subscriptions for the issuance and redemption of securities when it appears likely that new or extended Treasury borrowing authority will not be timely enacted.

Subpart B—Time Deposit Securities

Time deposit Treasury securities are offered to State and local government investors to enable these investors to satisfy yield restrictions in the Internal Revenue Code. The major changes to the time deposit offering from the 1980 regulations are as follows:

(1) Section 344.2(a)(1)—Certificates will be available for terms of 30 days to one year. This reduces the 45-day minimum heretofore provided.

(2) Section 344.2(a)(3)—The maximum term for Treasury bonds will be reduced to 30 years from 40 years.

(3) Section 344.2(b)—The interest rate tables are changed from weekly tables to daily tables.

(4) Section 344.2(c)(2)—All payments of principal and interest on time deposit securities subscribed for on or after February 1, 1987, are being or will be made by the Automated Clearing House method (ACH) to the financial institution for the account of the investor.

(5) Section 344.3(b)—The 20-day notice of the intention to invest is reduced to 15 calendar days. In addition, the subscriber may defer the issue date up to seven calendar days after the date originally specified for issuance.

(6) Section 344.3(b)—A subscription may be amended on or before the proposed issue date for the purpose of changing the aggregate principal amount up or down by no more than ten percent, previously five percent, and changing the interest rate to any other rate, which does not exceed the maximum allowable rate, on the applicable table.

(7) Section 344.3(c)—Subscribers must certify that none of the proceeds submitted in payment is derived from the redemption before maturity of other securities of the State and Local Government Series. Subscribers must also certify that either none of the proceeds submitted in payment is derived from the sale of escrowed open market securities or, if so, the yield of the State and Local Government Series securities being purchased does not exceed the yield at which the open market securities were sold.

(8) Section 344.4—The six-month penalty for failure to make settlement on a subscription is modified to provide that the penalty applies if the failure to settle is due to a desire to take advantage of changes in interest rates, but not if the change was necessitated by an adversity in the financing. Certification to this effect is required.

(9) Section 344.4—The provision allowing subscribers to cancel the issuance of a security within 25 calendar days after the issue date is deleted.

(10) Section 344.5(b)(2)—A minimum 15-calendar day notice is required on early redemptions. This reduces the 20-day requirement previously imposed for most early redemptions.

(11) Section 344.5(b)(3)—A new subsection (b)(3) has been inserted and the following subsections have been renumbered appropriately. The new subsection (b)(3) provides for the Treasury to pay accrued interest for any fractional period since the last interest payment date, and for calculating the market charge for an early redemption of time deposit securities issued on or after September 1, 1989. The market charge, which is to be computed using the formulas in the Appendix, will reflect the present value of the remaining stream of payments on the time deposit security in the current market. Proceeds will not be reduced by any overpayment of interest which the entity may have received during the actual holding period as a result of having subscribed to a longer term security.

(12) Section 344.5(b)(4)—This section was renumbered from § 344.5(b)(3) to § 344.5(b)(4) and changed to apply to time deposit securities issued from December 28, 1976, through August 31, 1989.

(13) Section 344.5(b)(4)(iii)—For purposes of calculating the market charge for an early redemption, the term "current borrowing rate" is changed to mean the applicable rate shown in the table of maximum interest rates payable on State and Local Government securities for the day the request for early redemption is received or postmarked, rather than the week in which the early redemption date occurred, plus one-eighth of one percentage point.

Subpart C—Demand Deposit Securities

The Tax Reform Act of 1986 imposed arbitrage rebate requirements on issuers of tax-exempt bonds and directed the Department of the Treasury to modify its State and Local Government Series (SLGS) program to accommodate the new requirements and enable entities to invest qualifying funds in a Treasury money-market type investment vehicle. Accordingly, the Department expanded

the program with its 1986 regulations to include a new "demand deposit" security offering for investing proceeds from tax-exempt bond issues. This security is not treated as investment property for purposes of sections 143(g)(3) and 148 of the Internal Revenue Code and, therefore, enables eligible entities to invest proceeds of tax-exempt bonds in an obligation which avoids the earning of rebatable arbitrage. In addition, amounts earned from investing gross proceeds pursuant to Exception (6) in § 344.7(b)(5) of these regulations, relating to certain amounts of less than $25,000, are not subject to arbitrage rebate.

Other major features of this offering include:

(1) Section 344.6(a)—The demand deposit securities are issued in a minimum amount of $1,000 and any increment above that amount. The securities, defined as one-day certificates of indebtedness, roll over each day until the day of redemption.

(2) Section 344.6(b)—Interest is computed daily. The rate is based on an adjustment of the average yield in the most recent auction of three-month Treasury bills. Interest is accrued and added to the principal daily.

(3) Section 344.6(c)—Upon determination by the Secretary of the Treasury that the proceeds of any unredeemed demand deposit certificate may not be reinvested because of uncertainty that new or extended debt limit legislation will be timely enacted, the proceeds will be placed in a special interest-bearing, redeemable certificate of indebtedness, having a term of 90 days.

(4) Section 344.7(a)—The securities are issued upon a minimum notice of three business days.

(5) Section 344.7(b)(1)—Subscriptions are limited to bond issues of $35 million or less.

(6) Section 344.9(a)—The securities may be redeemed upon a minimum notice of one business day.

Subpart D—Special Zero Interest Securities

In order to give State and local government investors greater flexibility in investing certain proceeds that may become subject to yield restrictions, a new special zero interest security is being offered for the first time with these 1989 regulations. Under the terms of this offering, subscribers are not required to certify that as of the date of investment all the proceeds subject to yield restrictions are being invested in State and Local Government securities. This offering is the same as that for time deposit securities, except for the following:

(1) Section 344.11(a)—Only certificates of indebtedness and notes are offered.

(2) Section 344.11(b)—The interest yield on the security is zero percent.

(3) Section 344.12—The subscriber must certify that the investment consists only of original or investment proceeds of a tax-exempt bond issue that are not proceeds of an advance refunding issue to be used to discharge another issue, and that the original proceeds of the tax-exempt bond issue were not subject to arbitrage yield restrictions on the date of receipt thereof.

(4) Section 344.13—No penalty shall apply for redemption of the security before maturity.

Discussion of Final Rule

Background

The final rule reflects changes in the interim rule, including those made for purposes of clarification and those made in response to comments received to the notice of proposed rulemaking. Ten written comments were received on the interim regulations for United States Treasury State and Local Government Series securities. Following is a summary of the issues addressed in the comments and an explanation of the action taken with respect thereto.

Section 344.0(a) Offering of Securities

One comment was received requesting that consideration be given to offering notes and bonds that do not pay interest until maturity. The Department has not adopted this comment given that the Treasury has not traditionally issued such securities and making such securities available to State and local governments is not necessary in order for these entities to comply with arbitrage yield restrictions.

Section 344.0(b) Offering of Securities

One comment was received related to the definition of eligible purchasers of certificates of indebtedness. The request was made that the definition of eligible purchaser be expanded to include national banks acting in the capacity of trustee for collateralized mortgage obligations issued under debt instruments, and national banks acting as trustees for collective investment funds established and operated pursuant to 12 CFR 9.18. This comment was for the propose of allowing investments unrelated to tax-exempt bond issues. The Department has determined that expansion of the definition of eligible investors to include such entities and to permit such investments is not in keeping with the purpose and intent of the State and Local Government Securities program. The purpose of this program is to provide securities that enable State and local governments to comply with arbitrage yield restrictions.

Section 344.1(f) General Provisions

One commenter recommended that the regulations state that the penalty for improper certification or other misrepresentation by the subscriber would be applied only when the pertinent certifications were not made in good faith. The regulations have been amended to indicate that the penalty is not intended to apply to inadvertent error.

Section 344.3(c)(1) Subscription for Purchase

Several comments were received on the requirement that time deposit State and Local Government securities be purchased only with amounts which are subject to yield restrictions. The recommendation was made that this requirement be revised to read "the total investment consists only of proceeds which are subject to yield restrictions or arbitrage rebate requirements under the Internal Revenue Code." This recommendation has not been adopted. The sole purpose of the time deposit program is to offer a below-market rate security to enable State and local governments to comply with arbitrage yield restrictions. Allowing the investment of all bond proceeds would be inconsistent with this limited purpose.

Section 344.3(c)(2) Subscription for Purchase

Comments were received on the requirement that all proceeds of an issue subject to yield restrictions must be invested. One commenter suggested that "proceeds" should be defined as "original proceeds" or "investment proceeds," as opposed to transferred proceeds, sinking fund proceeds, replacement proceeds, collateral funds and amounts other than original proceeds or investment proceeds deposited in a reasonably required reserve fund. A statement has been added to § 344.0(b) to provide that the definitions are those adopted by the Internal Revenue Service. In addition, § 344.3(c) has been amended to provide that the "all or none" rule does not apply to transferred proceeds if no portion of such proceeds is being invested.

The same commenter suggested that the "all or none" restriction be waived

in those cases where a government investor desires to subscribe to SLGs bearing zero percent interest. In response to this and other comments expressing a need for a special exception to the "all or none" rule in order to facilitate investments subject to arbitrage yield restrictions under the Tax Reform Act of 1986, Subpart D, "Special Zero Interest Securities," has been added herein, providing for a new State and Local Government Series security offering.

Section 344.4(a) Issue Date and Payment

A comment was made that the provision in the regulations that the six-month penalty for failure to settle due to a subscriber attempting to take advantage of changes in the interest rate is unclear. The provision is intended to refer to changes in the State and Local Government Series interest rate or to changes in market interest rates.

It was also stated that the regulations do not make clear how a government body procedurally obtains a waiver of penalty. The Department believes that the regulations adequately state in § 344.4 that waiver authority lies with the Commissioner of the Public Debt and that a certified statement must be submitted to the Bureau of the Public Debt to request a waiver of the six-month penalty.

Section 344.6(b) Description of Securities

Comments were received relative to the interest rate for demand deposit securities. All commenters felt that the formula designed by the Treasury to determine the weekly interest rate on demand deposit securities results in a rate that is too volatile and too low. Recommendations included (1) setting a rate that is an index of short-term municipal rates and is not further reduced by an administrative fee, and (2) basing the rate on the market yield on Treasury bills and subtracting only the allocable cost of administering the program.

The interest rate formula for demand deposit securities has been changed. The new interest rate is based on an adjustment of the average yield in the most recent auction of three-month Treasury bills, rather than an adjustment of the Federal Funds rate. The new interest rate base is expected to result in less volatility in the demand deposit rate. In addition, it is anticipated that Treasury administrative costs will be significantly reduced.

Section 344.7(b) Subscription for Purchase

Comments were received related to the requirement that all of the proceeds received upon the sale of an issue of State or local government obligations be invested in demand deposit securities if any of such proceeds is to be invested therein. One commenter stated that this forces investors to invest longer term monies in low interest rate demand deposit securities in order to use them at all and thereby causes large negative arbitrage losses. This commenter recommended that issuers be permitted to invest part of the proceeds in time deposit securities at an interest rate no higher than the yield on the bond issue.

In response to these comments, a change has been made to require that only 25 percent of the proceeds received from the sale of the issue be invested in demand deposit securities, provided that the remainder of the proceeds are invested pursuant to one of the available exceptions. The available exceptions have been expanded to allow issuers, for example, to invest part of the proceeds in taxable obligations with a yield no higher than the yield on the bond issue. In light of these and other changes to the demand deposit program and in keeping with its limited purpose, a change has been made to exclude very large bond issues (in excess of $35 million) from the demand deposit program.

One commenter suggested that the demand deposit regulations be changed because investment of bond proceeds on the date of delivery is impossible if the issuer does not get "same day funds" when the bonds are delivered. A change has been made in the certification requirements to make allowance for a delay in receipt of funds.

Section 344.9(c) Redemption

A comment was received related to the certification requirement for demand deposit securities that any amount requested for redemption be expended within one day of receipt thereof for the purpose of the tax-exempt bond issue used to purchase the certificate. The recommendation is to modify that requirement so that redemption proceeds could be immediately reinvested in time deposit securities. A more general comment was that considerably greater flexibility should be permitted for mixing of investments among demand deposit SLGs and time deposit SLGs. The Department believes that implementing these recommendations would compromise the distinction between the purpose and design of the demand deposit and time deposit programs.

General

This rule is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required.

Although public comments were solicited in conjunction with the interim regulations, the notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C 601, *et seq.*) do not apply.

The collections of information contained in this regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1535–0091. The estimated annual burden per respondent varies from 10 to 45 minutes, depending on individual circumstances, with an estimated average of 15 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Bureau of the Public Debt, Forms Management Officer, Washington, DC 20239–1300, and to the Office of Management and Budget, Paperwork Reduction Project (1535–0091), Washington, DC 20503.

List of Subjects in 34 CFR Part 344

Bonds, Government securities, Securities.

Dated: June 28, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

Part 344 of Title 31, Code of Federal Regulations, is revised as follows and issued as Department of the Treasury Circular, Public Debt Series No. 3–72, Third Revision:

PART 344—REGULATIONS GOVERNING UNITED STATES TREASURY CERTIFICATES OF INDEBTEDNESS—STATE AND LOCAL GOVERNMENT SERIES, UNITED STATES TREASURY NOTES—STATE AND LOCAL GOVERNMENT SERIES, AND UNITED STATES TREASURY BONDS—STATE AND LOCAL GOVERNMENT SERIES

Subpart A—General Information

Sec.

344.0 Offering of securities.
344.1 General provisions.

Subpart B—Time Deposit Securities

344.2 Description of securities.
344.3 Subscription for purchase.
344.4 Issue date and payment.
344.5 Redemption.

Subpart C—Demand Deposit Securities

344.6 Description of securities.
344.7 Subscription for purchase.
344.8 Issue date and payment.
344.9 Redemption.

Subpart D—Special Zero Interest Securities

344.10 General.
344.11 Description of securities.
344.12 Subscription for purchase.
344.13 Redemption.

Appendix—Early Redemption Market Charge Formulas and Examples

Authority: 31 U.S.C. 3102, *et seq.*; sec. 1301, Pub. L. 99–514, 100 Stat. 2657.

Subpart A—General Information

§ 344.0 Offering of securities.

(a) In order to provide issuers of tax exempt securities with investments which allow them to comply with yield restriction and arbitrage rebate provisions of the Internal Revenue Code, the Secretary of the Treasury offers for sale the following State and Local Government Series securities:

(1) Time deposit securities:

(i) United States Treasury Certificates of Indebtedness,

(ii) United States Treasury Notes, and

(iii) United States Treasury Bonds.

(2) Demand deposit securities—United States Treasury Certificates of Indebtedness.

(3) Special zero interest securities:

(i) United States Treasury Certificates of Indebtedness.

(ii) United States Treasury Notes.

(b) As appropriate, the definitions of terms used in these regulations are those found in the relevant portions of the Internal Revenue Code and regulations. The term "government body" refers to issuers of State or local bonds described in section 103 of the Internal Revenue Code, as well as to any other entity subject to the yield restrictions in sections 141–150, or the arbitrage rebate requirements in section 143(g)(3) or 148, of the Internal Revenue Code. The term "postmark date" refers to the date affixed by the U.S. Postal Service, not to a postage meter date.

(c) This offering will continue until terminated by the Secretary of the Treasury.

§ 344.1 General provisions.

(a) *Regulations.* United States Treasury State and Local Government Series securities shall be subject to the general regulations with respect to United States securities, which are set forth in the Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), to the extent applicable. Copies of the circular may be obtained from the Bureau of the Public Debt, Department F, Washington, DC 20239–1200, or a Federal Reserve Bank or Branch.

(b) *Issuance.* The securities will be issued in book-entry form on the books of the Department of the Treasury, Bureau of the Public Debt, Washington, DC 20239–0101. Transfer of securities by sale, exchange, assignment or pledge, or otherwise will not be permitted.

(c) *Transfers.* Securities held in an account of any one type, i.e., time deposit, demand deposit, or special zero interest, may not be transferred within that account or to an account of any other type.

(d) *Fiscal agents.* Selected Federal Reserve Banks and Branches, as fiscal agents of the United States, may be designated to perform such services as may be requested of them by the Secretary of the Treasury in connection with the purchase of, transactions involving, and redemption of, the securities.

(e) *Authority of subscriber.* Where a commercial bank submits an initial or final subscription on behalf of a government body, it must certify that it is acting under the latter's specific authorization; ordinarily, evidence of such authority will not be required. Subscriptions submitted by an agent other than a commercial bank must be accompanied by evidence of the agent's authority to act. Such evidence must describe the nature and scope of the agent's authorization, must specify the legal authority under which the agent was designated, and must relate by its terms to the investment action being undertaken. Subscriptions unsupported by such evidence will not be accepted.

(f) *Reservations.* Transaction requests, including requests for subscription and redemption, will not be accepted if unsigned, inappropriately completed, or not timely submitted. The Secretary of the Treasury reserves the right:

(1) To reject any application for the purchase of securities under this offering;

(2) To refuse to issue any such securities in any case or any class(es) of cases; and

(3) To revoke the issuance of any security, and to declare the subscriber ineligible thereafter to subscribe for securities under this offering, if any security is issued on the basis of an improper certification or other misrepresentation by the subscriber, other than as the result of an inadvertent error, if the Secretary deems such action to be in the public interest.

Any of these actions shall be final. The authority of the Secretary to waive regulations under 31 CFR 306.126 applies to these regulations.

(g) *Debt limit contingency.* The Department of the Treasury reserves the right to change or suspend the terms and conditions of this offering, including provisions relating to subscriptions for and issuance of securities, interest payments, redemptions, and rollovers, as well as notices relating hereto, at any time the Secretary determines that issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit. Announcement of such changes shall be provided by such means as the Department deems appropriate.

(Approved by the Office of Management and Budget under control number 1535–0091)

Subpart B—Time Deposit Securities

§ 344.2 Description of securities.

(a) *Terms.*—(1) *Certificates of Indebtedness.* The certificates will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from 30 calendar days up to and including one year, or for any intervening period.

(2) *Notes.* The notes will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from one year and one day up to and including 10 years, or for any intervening period.

(3) *Bonds.* The bonds will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from 10 years and one day up to and including 30 years, or for any intervening period.

(b) *Interest rate.* Each security shall bear such rate of interest as the government body shall designate, but the rate shall not exceed the maximum rate. The applicable maximum interest rates for each day shall equal rates shown in a table (Form PD 4262), which will be released to the public by 10:00 a.m., Eastern time, each business day. If the Treasury finds that due to circumstances beyond its control the rates will not be available to the public by 10 a.m., Eastern time, on any given business day, it will provide an immediate announcement of that fact and advise that the applicable interest for the last preceding business day shall apply. The applicable rate table for any

subscription is the one in effect on the date the initial subscription is actually received during customary business hours by a Federal Reserve Bank or Branch, or if the initial subscription was mailed, the postmark date. Subscriptions postmarked on a non-business day will be subject to those interest rates which are in effect for the next business day. The rates specified in the tables are one-eighth of one percent below the then current estimated Treasury borrowing rate for a security of comparable maturity.

(c) *Payment.*—(1) *Interest computation and payment dates.* Interest on a certificate will be computed on an annual basis and will be paid at maturity with the principal. Interest on a note or bond will be paid semiannually. The subscriber will specify the first interest payment date, which must occur any time between 30 days and one year of the date of issue, and the final interest payment date must coincide with the maturity date of the security. Interest for other than a full semiannual interest period is computed on the basis of a 365-day or 366-day year (for certificates) and on the basis of the exact number of days in the half-year (for notes and bonds). See Appendix to Subpart E of Part 306 of this chapter for rules regarding computation of interest.

(2) *Method of payment.* For securities for which subscriptions are submitted on or after February 1, 1987, payment will only be made by the Automated Clearing House method (ACH) for the owner's account at a financial institution designated by the owner. To the extent applicable, provisions of § 357.26 on "Payments," as set forth in 31 CFR Part 357, shall govern ACH payments made under this offering. For securities for which subscriptions were submitted prior to February 1, 1987, payment will be made:

(1) By a direct credit to a Federal Reserve Bank or Branch for the account of the financial institution servicing the investor; or

(2) By ACH for the owner's account at a financial institution; or

(3) By Treasury check; or

(4) In accordance with other prior arrangements made by the subscriber with the Bureau of the Public Debt.

§ 344.3 Subscription for purchase.

(a) *Subscription requirements.* Subscriptions for purchase of securities under this offering must be submitted to a designated Federal Reserve Bank or Branch. Subscriptions may be submitted in person, by mail, or by other carrier. All subscriptions submitted by mail, whether initial or final, should be sent by certified or registered mail. A subscription filed at a designated Federal Reserve Bank or Branch is accepted, subject to verification by the Bureau of the Public Debt.

(b) *Initial subscriptions.* (1) An initial subscription, either on a designated Treasury form or in letter form, stating the principal amount to be invested and the issue date, must be received (or where mailed, must be postmarked) at least 15 calendar days before issue date. For example, if the securities are to be issued on March 16, the subscription must be postmarked no later than March 1. If the initial subscription is in letter form, it should read substantially as follows:

To: Federal Reserve Bank or Branch at _____

Pursuant to the provisions of Department of the Treasury Circular, Public Debt Series No. 3–72, current revision, the undersigned hereby subscribes for United States Treasury Time Deposit Securities—State and Local Government Series, to be issued as entries on the books of the Bureau of the Public Debt, Department of the Treasury, in the total amount and with the issue date shown below, which date is at least 15 calendar days after the date of this subscription:

Principal Amount
$ _____

Issue Date _____

The undersigned agrees that the final subscription, together with the remittance, will be submitted on or before the issue date.

_____
(Tax I.D. Number of State or local government body or other entity eligible to purchase State and Local Government Series securities)

_____
(Name of State or local government body or other entity eligible to purchase State and Local Government Series securities)

_____
(Date)

by _____
(Signature and Title)

(2) The provisions set out in paragraph (e) of § 344.1, dealing with the authority of the subscriber to act on behalf of a government body, and in § 344.4, relating to the failure to complete a subscription, apply to initial as well as final subscriptions.

(3) An initial subscription may be amended on or before the issue date, with the following exceptions:

(i) The issue date may not be changed to require issuance more than seven calendar days later than originally specified, and, if such change is made, written notification to the Federal Reserve Bank to which the subscription was submitted should be provided as soon as possible, but no later than one business day before the originally specified issue date;

(ii) The aggregate amount may not be changed by more than the ten percent limitation set out in paragraph (c) of this section; and

(iii) An interest rate may not be changed to a rate that exceeds the maximum interest rate in the table that was in effect at the time the initial subscription was submitted.

No initial subscription will be required where a final subscription is received or postmarked at least 15 calendar days before the issue date. Such final subscription will be treated as the initial subscription for purposes of determining the applicable interest rate table (see § 344.2(b)), and may be amended on or before the issue date, subject to the exceptions noted above.

(c) *Final subscriptions.* On or before the issue date, a final subscription must be submitted to the same Federal Reserve Bank or Branch to which the initial subscription was submitted. The final subscription must be for a total principal amount that is no more than ten percent above or below the aggregate principal amount specified in the initial subscription. The final subscription, dated and signed by an official authorized to make the purchase and showing the taxpayer identification number of the beneficial owner, must be accompanied by a copy of the initial subscription, where applicable. The various maturities, interest rates, and semiannual interest payment dates (in the case of notes and bonds), must be specified in the final subscription, as well as the title(s) of the designated official(s) authorized to request early redemption. Final subscriptions submitted for certificates, notes and bonds must separately itemize securities of each maturity and each interest rate. The final subscription must contain a certification by the subscriber that, as of the date of investment (without regard to any temporary period of no longer than 30 days):

(1) The total investment consists only of proceeds (including amounts treated as proceeds) of at tax-exempt bond issue which are subject to yield restrictions under sections 141–150 of the Internal Revenue Code during the entire period of investment;

(2) The total investment is not less than all of such proceeds except for—

(i) An amount not to exceed $100, and

(ii) Amounts required for payment due less than 30 days from the date of issue;

(3) None of the proceeds submitted in payment is derived (directly or indirectly) from the redemption before maturity of other securities of the State and Local Government Series; and

(4)(i) No portion of the investment is being made (directly or indirectly) with amounts that are to be used to discharge a tax-exempt bond issue and that are derived or are to be derived (directly or indirectly) from the sale of escrowed open market securities, the proceeds of which were to be used to discharge a tax-exempt bond issue; or

(ii) Although a portion of the investment is being made (directly or indirectly) with amounts that are to be used to discharge a tax-exempt bond issue and that are derived or are to be derived (directly or indirectly) from the sale of escrowed open market securities, the proceeds of which were to be used to discharge a tax-exempt bond issue, the composite yield to maturity of all investments being purchased with such amounts does not exceed the composite yield to maturity of the securities that were sold, based on the price at which they were sold.

Where proceeds are subject to yield restrictions for a limited period of time, under paragraph (c)(1) of this section, no investment of such proceeds beyond such period may be made. For example, if a reserve fund of a refunding issue is subject to yield restrictions for a period of four years, the securites purchased as an investment of the reserve fund may not have a maturity longer than four years. With respect to obligations described in section 103 of the Internal Revenue Code issued after January 31, 1987, paragraph (c)(2) of this section is satisfied only if on the date of investment, all the proceeds of the issue which are subject to yield restrictions are invested in State and Local Government Series securities. Paragraph (c)(2) of this section does not apply to purpose investments, such as mortgage notes or student loan obligations. Transferred proceeds of the tax exempt bond issue that were proceeds of another issue shall not be treated as proceeds for purposes of paragraph (c)(2) of this section if no portion of the total investment consists of such proceeds. See § 344.1(f) as to improper certifications.

(Approved by the Office of Management and Budget under control number 1535–0091)

§ 344.4 Issue date and payment.

The subscriber shall fix the issue date of each security in the initial subscription. The issue date may not exceed by more than 60 calendar days either the date of receipt of the initial subscription at the Federal Reserve Bank or Branch to which it was submitted or, where mailed, the postmark date thereof. Full payment for each subscription must be available in an account for debit by a Federal Reserve Bank or Branch on or before the date of issue. Any subscriber which fails to make settlement on a subscription once submitted shall be ineligible thereafter to subscribe for securities under this offering for a period of six months, beginning on the date the subscription is withdrawn or the proposed issue date, whichever occurs first, unless the Commissioner of the Public Debt determines that such failure is due to circumstances not foreseen or contemplated by the subscriber at time of subscription. Where failure to settle is due to adversity in the financing, reasonable accommodation will be made, provided the subscriber submits a certified statement to the Commissioner of the Public Debt, Bureau of the Public Debt, Washington, DC 20239–0001, with respect to those circumstances. The penalty will apply in other instances, for example, where failure to settle is due to a subscriber attempting to take advantage of changes in interest rates.

(Approved by the Office of Management and Budget under control number 1535–0091)

§ 344.5 Redemption

(a) *General.* A security may not be called for redemption by the Secretary of the Treasury prior to maturity. Upon the maturity of a security, the Department will make payment of the principal amount and interest due to the owner thereof. A security scheduled for redemption on a non-business day will be redeemed on the next business day.

(b) *Before maturity.*—(1) *In general.* A security may be redeemed at the owner's option no earlier than 25 calendar days after the issue date in the case of a certificate, and one year after the issue date in the case of a note or bond. Partial redemptions may be requested in multiples of $100; however, an account balance of less than $1,000 will be redeemed in total.

(2) *Notice.* Notice for redemption prior to maturity must be submitted, by letter or wire, by the official(s) authorized to redeem the securities, as shown on the final subscription form, to the Bureau of the Public Debt, Department L, Washington, DC 20239–0101. The notice must show the account number, the maturities of the securities to be redeemed, and the tax identification number of the subscriber. This notice must be received no less than 15 calendar days before the requested redemption date. However, owners are encouraged to provide as much notice of redemption as possible to assure that payment can be timely made. Once received, a notice of redemption prior to maturity cannot be cancelled.

(3) *Redemption proceeds—subscriptions on or after September 1, 1989.* For securities subscribed for on or after September 1, 1989, the amount of the redemption proceeds is calculated as follows:

(i) *Interest.* If a security is redeemed before maturity on a date other than a scheduled interest payment date, interest will be paid for the fractional interest period since the last interest payment date.

(ii) *Market charge.* An amount shall be deducted from the redemption proceeds in all cases where the current borrowing rate of the Department of the Treasury for the remaining period to original maturity of the security prematurely redeemed exceeds the rate of interest originally fixed for such security. The amount shall be the present value of the future increased borrowing cost to the Treasury. The annual increased borrowing cost for each interest period is determined by multiplying the principal by the difference between the two rates. For notes and bonds, the increased borrowing cost for each remaining interest period to original maturity is determined by dividing the annual cost by two. For certificates, the increased borrowing cost for the remaining period to original maturity is determined by multiplying the annual cost by the number of days remaining until original maturity divided by the number of days in the calendar year. Present value shall be determined by using the current borrowing rate as the discount factor. The term "current borrowing rate" means the applicable rate shown in the table of maximum interest rates payable on United States Treasury securities—State and Local Government Series—for the day the request for early redemption is received or, where mailed, the postmark date, plus one-eighth of one percentage point. Where redemption is requested as of a date less than 30 calendar days before the original maturity date, such applicable rate is the rate shown for a security with a maturity of 30 days. The market charge for bonds, notes, and certificates of indebtedness can be computed by use of the formulas set forth in the Appendix to this Part 344.

(4) *Redemption proceeds—subscriptions from December 28, 1976 through August 31, 1989.* For securities subscribed for from December 28, 1976 through August 31, 1989, the amount of the redemption proceeds is calculated as follows:

(i) *Interest.* Interest for the entire period the security was outstanding shall be recalculated on the basis of the

lesser of the original interest rate at which the security was issued, or the interest rate that would have been set at the time of the initial subscription had the term for the security been for the shorter period. If a note or bond is redeemed before maturity on a date other than a scheduled interest payment date, no interest will be paid for the fractional interest period since the last interest payment date.

(ii) *Overpayment of interest.* If there have been overpayments of interest, as determined under paragraph (b)(4)(i) of this section, there shall be deducted from the redemption proceeds the aggregate amount of such overpayments, plus interest, compounded semiannually, thereon from the date of each overpayment to the date of redemption. The interest rate to be used in calculating the interest on the overpayment shall be one-eighth of one percent above the maximum rate that would have applied to the initial subscription had the term of the security been for the shorter period.

(iii) *Market charge.* An amount shall be deducted from the redemption proceeds in all cases where the current borrowing rate of the Department of the Treasury for the remaining period to original maturity of the security prematurely redeemed exceeds the rate of interest originally fixed for such security. The amount shall be calculated using the formula in paragraph (b)(3)(ii) of this section.

(5) *Redemption proceeds—subscriptions on or before December 27, 1976.* (i) For securities subscribed for on or before December 27, 1976, the amount of the redemption proceeds is calculated as follows.

(ii) The interest for the entire period the security was outstanding shall be recalculated on the basis of the lesser of the original interest rate at which the security was issued, or an adjusted interest rate reflecting both the shorter period during which the security was actually outstanding and a penalty. The adjusted interest rate is the Treasury rate which would have been in effect on the date of issuance for a marketable Treasury certificate, note, or bond maturing on the quarterly maturity date prior to redemption (in the case of certificates), or on the semiannual maturity period prior to redemption (in the case of notes and bonds), reduced in either case by a penalty which shall be the lesser of

(A) One-eighth of one percent times the number of months from the date of issuance to original maturity, divided by the number of full months elapsed from the date of issue to redemption, or

(B) One-fourth of one percent.

There shall be deducted from the redemption proceeds, if necessary, any overpayment of interest resulting from previous payments made at a higher rate based on the original longer period to maturity.

(Approved by the Office of Management and Budget under control number 1535–0091)

Subpart C—Demand Deposit Securities

§ 344.6 Description of securities.

(a) *Terms.* The securities are defined as one-day certificates of indebtedness. The securities will be issued in a minimum of $1,000 and any increment above that amount. Each subscription will be established as a unique account. Securities will be automatically rolled over each day unless redemption is requested.

(b) *Interest rate.* (1) Each security shall bear a variable rate of interest based on an adjustment of the average yield for three-month Treasury bills at the most recent auction. A new rate will be effective on the first business day following the regular auction of three-month Treasury bills and will be shown in the table (Form PD 4262), available to the public on such business day. Interest will be accrued and added to principal daily. Interest will be computed on the balance of the principal, plus interest accrued through the immediately preceding day.

(2) The annualized effective demand deposit rate in decimals, designated "I" in the formula below, is calculated as:

$$I=[(100/P)^{Y/DTM}-1]\,(1-MTR)-TAC$$

Where

P = The average auction price for the Treasury bill, per hundred, to three decimal places.

Y = 365 if the year following issue date does not contain a leap year day and 366 if it does contain a leap year day.

DTM = The number of days from date of issue to maturity for the auctioned Treasury bill.

MTR = Estimated average marginal tax rate, in decimals, of purchasers of short-term tax exempt bonds.

TAC = Treasury administrative costs, in decimals.

The daily factor for the demand deposit rate is then calculated as:

$$DDR=(1+I)^{1/Y}-1$$

(3) Information as to the estimated average marginal tax rate and costs for administering the demand deposit State and Local Government securities program, both to be determined by Treasury from time to time, will be published in a separate notice in the **Federal Register.**

(c) *Payment.* Interest earned on the securities will be added to the principal and will be reinvested daily until redemption. At any time the Secretary determines that issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit, the Department will invest and unredeemed demand deposit securities in special 90-day certificates of indebtedness. These 90-day certificates will be payable at maturity, but redeemable before maturity, provided funds are available for redemption, or reinvested in demand deposit securities when regular Treasury borrowing operations resume, both at the owner's option. Funds invested in the 90-day certificates of indebtedness will earn simple interest equal to the daily factor in effect at the time demand deposit security issuance is suspended, multiplied by the number of days outstanding.

§ 344.7 Subscription for purchase.

(a) *Subscription requirements.* Subscriptions of purchase of securities under this offering must be submitted to a designated Federal Reserve Bank or Branch. Subscriptions must be submitted on a designated Treasury form, must specify the principal amount to be invested and the issue date, and must be signed by an official authorized to make the purchase. The Federal Reserve Bank or Branch must receive the subscription by 1:00 p.m., Eastern time, at least three business days before the issue date. The principal amount to be invested may be changed without penalty. The notification of change, if any, must be received by the same Federal Reserve Bank or Branch to which the subscription was submitted by 1:00 p.m., Eastern time, at least one business day before the issue date.

(b) *Certification:* By completing the subscription form, subscribers certify to the following:

(1) Neither the aggregate issue price nor the stated redemption price at maturity of the bonds that are part of the tax-exempt issue exceeds $35 million. Issue price and stated redemption price at maturity have the meanings given such terms in sections 1273 and 1274 of the Internal Revenue Code;

(2) No portion of the tax-exempt bond issue has been or will be issued or permitted to remain outstanding, and the expenditure of gross proceeds of the tax-exempt bond issue has not and will not be delayed, for the principal purpose of investing in demand deposit securities;

(3) Only eligible gross proceeds of the tax-exempt bond issue have been and

will be submitted in payment for demand deposit securities. Eligible gross proceeds are all gross proceeds of the tax-exempt bond issue except—

(i) Gross proceeds of an advance refunding issue to be used to discharge another issue;

(ii) Gross proceeds accumulated in a reserve or replacement fund (other than a bona fide debt service or reasonably required reserve or replacement fund); and

(iii) Solely for purposes of this paragraph (b)(3), gross proceeds previously invested at any time pursuant to any exception in paragraph (b)(5) of this section, other than Exception (6) (relating to amounts of less than $25,000) and Exception (8) (relating to inadvertent error).

(4) At least 25 percent of the eligible gross proceeds received from the sale of the tax-exempt bond issue have been or will be invested in demand deposit securities within three business days of the date of receipt thereof;

(5) All eligible gross proceeds of the tax-exempt bond issue have been and will be invested within four business days of the date of receipt thereof in demand deposit securities (principal repayments on purpose investments are treated as gross proceeds received on the date of repayment). This paragraph (b)(5) shall not apply to gross proceeds that are at all times (prior to the date of expenditure thereof) invested pursuant to one of the exceptions described below:

(i) *Exception (1).* Gross proceeds that are invested solely in investments the earnings on which are not subject to rebate under section 148(f) or 143(g)(3) of the Internal Revenue Code (whichever applies).

(ii) *Exception (2).* Gross proceeds that are invested in obligations the earnings on which are not reasonably expected to be subject to rebate by reason of section 148(f)(4)(A)(ii) (relating to certain bona fide debt service funds) or section 148(f)(4)(B) (relating to exception for temporary investments) of the Internal Revenue Code.

(iii) *Exception (3).* Gross proceeds that are not reasonably expected to be gross proceeds of the tax-exempt bond issue for more than seven business days.

(iv) *Exception (4).* Gross proceeds that are part of a reasonably required reserve or replacement fund (other than a bona fide debt service fund) for the tax-exempt bond issue.

(v) *Exception (5).* Gross proceeds that are invested in taxable obligations, but only if the yield on each obligation (computed separately and on the basis of an arm's length purchase price) is no higher than the yield on the tax-exempt bond issue.

(vi) *Exception (6).* Eligible gross proceeds that are not invested in one-day certificates of indebtedness or pursuant to Exceptions (1) through (5) above, but only if the total amount of such eligible gross proceeds on any particular day is less than $25,000. This Exception (6) shall not apply to gross proceeds that are part of a reasonably required reserve or replacement fund (other than a bona fide debt service fund).

(vii) *Exception (7).* Gross proceeds that are not invested pursuant to Exception (4) or (6) above, and that are invested in any taxable obligation the yield on which is higher than the yield on the tax-exempt bond issue, but only if taxable obligations described in Exception (5) above, the tax-exempt obligations described in Exception (1) above, are not available for investment (for example, because market interest rates are too high and statutory or indenture restrictions prevent investments in tax-exempt obligations).

(viii) *Exception (8).* Gross proceeds that are not invested in demand deposit securities due to an inadvertent error.

See § 344.1(f) as to improper certifications.

§ 344.8 Issue date and payment.

The subscriber shall fix the issue date on the subscription, the issue date to be a business day at least three business days after receipt of the subscription by a designated Federal Reserve Bank or Branch. Full payment for each subscription must be available in an account for debit by the Bank or Branch on or before the date of issue. Any subscriber which fails to settle a subscription shall be ineligible thereafter to subscribe for securities under this offering for a period of six months, unless the Commissioner of the Public Debt determines that such failure is due to circumstances not foreseen or contemplated by the subscriber at the time of subscription. Where failure to settle is due to adversity in the financing, the restriction on investment may be waived, provided the subscriber submits a certified statement to the Commissioner of the Public Debt, Bureau of the Public Debt, Washington, DC 20239–0001, with respect to the circumstances.

(Approved by the Office of Management and Budget under control number 1535–0091)

§ 344.9 Redemption.

(a) *General.* A security may be redeemed at the owner's option provided a request for redemption is received not less than one business day prior to the requested redemption date. Partial redemptions may be requested; however, an account balance of less than $1,000 will be redeemed in total. Payment will be made by crediting an account maintained at the Federal Reserve Bank or Branch by the financial institution servicing the subscriber.

(b) *Notice.* Notice of redemption must be received by a designated Federal Reserve Bank or Branch by 1:00 p.m., Eastern time, one business day prior to the requested redemption date. The notice must be provided on a designated Treasury redemption form or by letter and must be signed by an official(s) authorized to redeem the securities.

(c) *Certification.* By completing the redemption form, subscribers certify to the fact that the proceeds to be received will be expended within one day of receipt thereof for the purpose for which the tax-exempt bond was issued.

Subpart D—Special Zero Interest Securities

§ 344.10 General.

Provisions of Subpart B, Time Deposit Securities, apply except as specified below.

§ 344.11 Description of securities.

(a) *Terms.* Only certificates of indebtedness and notes are offered.

(1) *Certificates of Indebtedness.* The certificates will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from 30 calendar days up to and including one year, or for any intervening period.

(2) *Notes.* The notes will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from one year and one day up to and including 10 years, or for any intervening period.

(b) *Interest rate.* Each security shall bear no interest.

§ 344.12 Subscription for purchase.

In lieu of the certification under § 344.3(c), the final subscription must contain a certification by the subscriber that:

(a) The total investment consists only of original or investment proceeds of a tax-exempt bond issue that are subject to yield restrictions under sections 141–150 of the Internal Revenue Code;

(b) None of the original proceeds of the tax-exempt bond issue were subject to arbitrage yield restrictions under section 148 of the Internal Revenue Code on the date of receipt thereof; and

(c) None of the proceeds submitted in payment are proceeds of an advance refunding issue to be used to discharge another issue or part of a reserve or replacement fund for the advance refunding issue.

§ 344.13 Redemption.

(a) *General.* Provisions of § 344.5(a) apply.

(b) *Before maturity.*—(1) *In general.* A security may be redeemed at the owner's option no earlier than 25 calendar days after the issue date in the case of a certificate and one year after the issue date in the case of a note. No market charge or penalty shall apply in the case of the redemption of a special zero interest security before maturity.

(2) *Notice.* Notice of redemption prior to maturity must be received by the Bureau of the Public Debt, Department L, Washington, DC 20239–0101. The notice must be provided, by letter or wire, by the official(s) authorized to redeem the securities, as shown on the final subscription form. The notice must show the account number, the maturities of the securities to be redeemed, and the tax identification number of the subscriber. This notice must be received no less than 15 calendar days before the requested redemption date. However, owners are encourged to provide as much notice of redemption as possible to assure that payment can be timely made. Once received, a notice of redemption prior to maturity cannot be cancelled.

(Approved by the Office of Management and Budget under control number 1535–0091)

Appendix—Formulas for Determining the Amount of Market Charge for Early Redemption of Securities under Subsections 344.5 (b)(3)(ii) and (b)(4)(iii)

The amount of the market charge for bonds and notes can be determined through use of the following formula:

$$M = \frac{\left(\frac{b}{2}\right)\left(\frac{r}{s}\right) + \left(\frac{b}{2}\right)(a)}{1 + \left(\frac{r}{s}\right)\left(\frac{i}{2}\right)},$$

where

M = market charge

b = increased annual borrowing cost (i.e., principal multiplied by the excess of the current borrowing rate for the period from redemption to original maturity of note or bond over the rate for the security)

r = number of days from redemption to beginning of next semiannual interest period

s = number of days in current semiannual period

i = current borrowing rate for period from redemption to maturity (expressed in decimals)

n = number of remaining full semiannual periods to the original maturity date

$$a = \frac{\left(1 - v^{n}\right)}{\frac{i}{2}}$$

$$v^{n} = \frac{1}{\left(1 + \frac{i}{2}\right)^{n}}$$

The application of this formula may be illustrated by the following example:

(1) Assume that a $600,000 note is issued on July 1, 1985, to mature on July 1, 1995. Interest is payable at a rate of 8% on January 1 and July 1.

(2) Assume that the note is redeemed on February 1, 1989, and that the current borrowing rate for Treasury at that time for the remaining period of 6 years and 150 days is 11%.

(3) The increased annual borrowing cost is $18,000. ($600,000) × (11% − 8%)

(4) The market charge is computed as follows:

$$M = \frac{\left(\frac{\$18,000}{2}\right)\left(\frac{150}{181}\right) + \left(\frac{\$18,000}{2}\right)(a)}{1 + \left(\frac{150}{181}\right)\left(\frac{.11}{2}\right)} =$$

$$\frac{\$7,458.56 + (\$9,000)(a)}{1.045580111} =$$

$$\frac{\$7,458.56 + (\$9,000)\left(\frac{1 - \frac{1}{\left(1 + \frac{.11}{2}\right)^{12}}}{\frac{.11}{2}}\right)}{1.045580111} =$$

$$\frac{\$7,458.56 + (\$9,000)(8.618517849)}{1.045580111} =$$

$$\frac{\$7,458.56 + \$77,566.66}{1.045580111} =$$

$$\$81,318.71$$

The amount of the market charge for certificates can be determined through use of the following formula:

$$M = \frac{(b)\left(\frac{r}{s}\right)}{1 + \frac{r}{s}(i)},$$

where

M = market charge
b = increased borrowing cost for full period
r = number of days from redemption date to original maturity date
s = number of days in current annual period (365 or 366)
i = current borrowing rate expressed in decimals (discount factor)

The application of this formula may be illustrated by the following example:

(1) Assume that a $50,000 certificate is issued on March 1, 1987, to mature on November 1, 1987. Interest is payable at a rate of 10%.

(2) Assume that the certificate is redeemed on July 1, 1987, and that the current borrowing cost to Treasury for the 123-day period from July 1, 1987, to November 1, 1987, is 11.8%.

(3) The increased annual borrowing cost is $900. ($50,000 − 11.8% − 10%)

(4) The market charge is computed as follows:

$$M = \frac{\$900\left(\frac{123}{365}\right)}{1 + \left(\frac{123}{365}\right)(.118)} =$$

$$\frac{303.29}{1.039764384} =$$

$$\$291.69$$

[FR Doc. 89-15933 Filed 7-5-89; 8:45 am]
BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Bureau of the Public Debt

Demand Deposit Securities of the State and Local Government Series; Average Marginal Tax Rate and Treasury Administrative Costs

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice of estimated average marginal tax rate and Treasury administrative costs for Demand Deposit United States Treasury Certificates of Indebtedness—State and Local Government Series.

SUMMARY: This notice is being published to provide the information necessary to apply the interest rate formula for Demand Deposit United States Treasury Certificates of Indebtedness—State and Local Government Series (31 CFR Part 344 Subpart C). The final regulations governing securities of the State and Local Government Series which appear in the current issue of the **Federal Register**, in setting out the formula, make provision for such publication (31 CFR 344.6). The factor necessary to convert the interest rate to a tax-exempt equivalent (1 − the average marginal tax rate of purchasers of short-term tax-exempt bonds) is estimated to be .68. The Treasury's administrative costs have been estimated to be 12.5 basis points (.125 percent).

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Dyson, Attorney-Advisor, (202) 376–4320, or Margaret Marquette, Attorney-Advisor, (202) 447–9859.

SUPPLEMENTARY INFORMATION: The Department of the Treasury, under authority of Chapter 31 of Title 31, United States Code, and pursuant to the Tax Reform Act of 1986, Pub. L. 99–514, offers a demand deposit United States Treasury Certificate of Indebtedness—State and Local Government Series. This security is a one-day certificate of indebtedness, issued in an amount of $1,000 or any higher dollar amount, with interest accrued and added to the principal daily. In the final regulations published simultaneously with this notice, provision is made to provide by notice the information necessary to apply the interest rate formula to the new demand deposit certificate, *i.e.*, the average yield for three-month Treasury bills at the most recent auction, multiplied by one minus the estimated average marginal tax rate ("1 − MTR") of purchasers of short-term tax-exempt bonds, less Treasury administrative costs. The factor "1 − MTR" is .68. The administrative cost have been determined to be 12.5 basis points (.125 percent). Both the estimated "1 − MTR" and the administrative costs are subject to redetermination by the Department of the Treasury; any future changes thereof will be published by notice in the **Federal Register**.

Dated: May 30, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89–15934 Filed 7–5–89; 8:45 am]

BILLING CODE 4810-35-M

federal register

Friday
July 7, 1989

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 107

Airport Security; Delegation of Authority; Final Rule

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 107

Airport Security; Designation of Airports; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. 25952; Amdt. No. 107-5]

Airport Security; Delegation of Authority

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the airport security regulations by removing references to certain obsolete official titles and by adding the current official titles. This amendment is necessary because a recent agencywide reorganization resulted in the adoption of several new official titles and in delegations of authority under those titles. This action makes the airport security regulations consistent with current agency structure and should alleviate confusion regarding the agency's reorganization.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: James E. Parker, Office of Civil Aviation Security [ACS-3], Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591. Telephone: (202) 267-9864.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1988, the FAA underwent a far-reaching reorganization that affected both headquarters and regional organizations. The most significant change is that the Regional Offices, which formerly reported directly to the Administrator, are now under "straight line" authority, meaning that certain individual units within each Regional Office must now report to whichever Headquarters office is responsible for the functions of those individual units.

Within Part 107 of the Federal Aviation Regulations (FAR), various elements of the FAA have been delegated decision-making authority by the Administrator. These delegations need to be updated. In addition, throughout the Federal Aviation Regulations references are made to offices that have been renamed or are no longer in existence as a result of the reorganization.

Part 107 must therefore be amended to reflect the reorganizations and changes that have taken place.

Paperwork Reduction Act

The paperwork requirements in sections being amended by this document have already been approved. There will be no increase or decrease in paperwork requirements as a result of these amendments, since the changes are completely editorial in nature.

Good Cause Justification for Immediate Adoption

Because this amendment is needed immediately to avoid confusion and to effectively implement the agency's reorganization, good cause exists for adopting this amendment in less than 30 days.

Reason for No Notice

In view of the fact that this amendment merely makes an editorial change to Part 107, notice and public procedure on this amendment are unnecessary. Moreover, publication for prior comment would not reasonably be expected to result in the receipt of useful information on this minor change in the regulation.

Federalism Implications

The regulations herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this action merely involves an editorial amendment that imposes no additional burden on any person. It simply implements the use of new official titles consistent with the agency's reorganization. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required. In addition, the FAA certifies that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 107

Air carriers, Air safety, Air transportation, Aircraft, Airplanes, Airports, Arms and munitions, Aviation safety, Baggage, Charter flights, Firearms, Foreign air carriers, Guns, Law enforcement officers, Police, Safety, Security measures.

The Amendment

In consideration of the foregoing the Federal Aviation Administration amends Part 107 of the Federal Aviation Regulations (14 CFR Part 107) as follows:

PART 107—AIRPORT SECURITY

1. The authority for Part 107 continues to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1358, and 1421; 49 U.S.C. 106 (g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 107.3 [Amended]

2. Section 107.3 is amended by removing the words "Regional Director" in paragraph (a)(4) and substituting therefore "Director of Civil Aviation Security"; by removing the words "Civil Aviation Security Inspector" in paragraph (d) and substituting therefor "Civil Aviation Security Special Agent"; and by removing the words "Director of the Civil Aviation Security Service" in paragraph (e) and substituting therefor "Director of Civil Aviation Security".

§ 107.5 [Amended]

3. Section 107.5 is amended by removing the words "Regional Director" and substituting therefore "Director of Civil Aviation Security" wherever they appear.

§ 107.9 [Amended]

4. Section 107.9 is amended by removing the words "Regional Director" and substituting therefor "Director of Civil Aviation Security" wherever they appear.

§ 107.11 [Amended]

5. Section 107.11 is amended by removing the words "Regional Director" and substituting therefor "Director of Civil Aviation Security" wherever they appear.

Issued in Washington, DC, on June 28, 1989.

Robert E. Whittington,

Acting Administrator.

[FR Doc. 89-15923 Filed 7-6-89; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
July 7, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Cockpit Voice Recorders (CVR) and Flight Recorders; Disposition of Comments

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Certain Voice Recorders (CVR) and Flight Recorders; Elimination of Correlation

DEPARTMENT OF TRANSPORTATION

14 CFR Part 91

[Docket No. 25530; Amendment No. 91-205]

RIN 2120-AC48

Cockpit Voice Recorders (CVR) and Flight Recorders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments (Part 91 requirements).

SUMMARY: When the Federal Aviation Administration (FAA) issued a final rule on cockpit voice recorders (CVR) and flight recorders (June 30, 1988) (53 FR 26134; July 11, 1988), it invited further comments on the Part 91 requirements that the rule amended. This document acknowledges those comments. Because these comments are consistent with the initial intent of this rule, the FAA has determined that there is no need for further action other than making this response.

DATES: *Effective date:* October 11, 1988. *Compliance date:* October 11, 1991.

ADDRESSES: The Cockpit Voice Recorder (CVR) and Flight Recorder Final Rule docket may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, Room 915-G, 800 Independence Avenue SW., Washington, DC 20591. The Rules Docket is open weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Smith, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-9684.

SUPPLEMENTARY INFORMATION

Discussion of Comments

At the time the final rule on cockpit voice recorders (CVRs) and flight recorders was published (53 FR 26134, July 11, 1988), the FAA requested further comment on the Part 91 requirements adopted in the rule. Twenty comments were received, half of which are photocopies of the same letter, although the signatures differ. Moreover, these ten comments lay beyond the scope of the request set forth in the final rule, and neither opposed nor supported the rule or the Part 91 requirements. Of the remaining ten comments, two were in support; four were in opposition; and three wanted further clarification or suggested corrections. One remaining comment expanded upon the commenter's earlier submission. Those comments which pointed out corrections to be made will be addressed in a separate corrective document, which is being developed.

Specifically, one commenter based his opposition on the belief that the Part 91 requirement would not contribute to the safety of flight and would simply burden operators/owners with increased costs. Additionally, the commenter felt that his and others' Fifth Amendment rights would be violated by requiring aircraft owners to pay for installation of equipment that could give information which might be used against them in any civil or criminal proceeding. Recent reports, especially those from the National Transportation Safety Board (NTSB), continue to support the use of CVRs and flight recorders as a means for learning as much as possible about accident circumstances. Obviously, although the presence of the device will not prevent accidents, such devices might reveal information that could prevent accidents in the future. Fears of intrusion into the Fifth Amendment rights of aircraft owners are unfounded; FAR § 121.359(e) states that information obtained from CVRs is used to assist in determining the cause of an accident or occurrence, and that such record is not used in any civil penalty or certificate action by the Administrator. With regard to any criminal action, the rule does not compel testimony, the right protected by the Fifth Amendment; the rule requires only that CVRs be installed. In addition, where a pilot is not the owner/operator of an aircraft, any evidence would be provided by a third party, a situation not covered by the Fifth Amendment.

Several commenters, in opposing the rule, cite high costs which, in their view, will outweight any probable benefits. For example, the Airline Owners and Pilots Association (AOPA) asserts that the FAA used a complicated formula to obfuscate the fact that the rule is significant and, therefore, minimized or dismissed the economic impact of the rule on Part 91 operators. The AOPA also maintains that the costs resulting from this rule are significant. It reasons that, while the FAA estimates the cost of adding a CVR to an affected aircraft at $25,000, on average, AOPA's sources indicate the real cost will range from $18,500 to $30,000. The AOPA also asserts that installation of a flight recorder would require an additional $40,000 to $45,000. Thus, the total would range from $60,000 to $75,000 and, therefore, unduly burden many Part 91 operators.

In another argument, GTE asserts that it has little faith in forecasts for light-weight, low-cost recorders and believes that in reality they are expensive and heavy. GTE indicates that the Cessna Citation options list contain CVRs priced at $35,750 with a weight of 42 pounds. This list also contains flight recorders priced at $60,775 with a weight yet to be determined.

Premark International (Premark) expresses a different concern. Premark states that the FAA did not follow its usual pattern of "grandfathering" older aircraft in order to avoid expensive retrofit costs to the Part 91 community. Premark also maintains that the cost of CVR modifications for each of its aircraft is estimated to range from $18,000 to $30,000. These estimated costs are for installation only and do not include associated costs such as downtime and ferrying.

In support of the rule, DOW Chemical U.S.A. (DOW) estimates the actual costs of equipping King Airs with CVRs to be about $13,000 per aircraft, including down time. DOW points out that these aircraft are already wired for this equipment.

In order to estimate the cost of the CVR/flight recorder final rule, the FAA averaged many of the possible costs of adding CVR and flight recorder equipment to Part 91 aircraft. Thus, the FAA is not surprised, and neither should the commenters be surprised, the costs for adding such equipment to individual aircraft should vary, in some instances by a considerable amount, from this average. The FAA's estimated $25,000 cost falls easily within the range of costs—$13,000 to $30,000—presented by commenters. In addition, the FAA has provided additional relief from the burdens of this rule by extending the compliance date by 1 year to October 11, 1991.

Regarding flight recorders only, it appears that certain commenters still do not understand that the rule does not require aircraft currently in use to be retrofitted with flight recorder equipment. The rule does require such equipment for aircraft manufactured after October 11, 1991, which have a passenger seating capacity of 10 or more. Hence, no costs related to flight recorder equipment retrofitting may be attributed to this rule.

Conclusion

The FAA has determined, based on the above discussion, that no further rulemaking action is necessary at this time. Amendment No. 91-204 remains in effect as prescribed by the July 11, 1988, final rule.

Issued in Washington, DC, on June 29, 1989.

William J. Sullivan,

Acting Director, Aircraft Certification Service.

[FR Doc. 89-15922 Filed 7-6-89; 8:45 am]

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federal register

Friday
July 7, 1989

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Hair Grower and Hair Loss Prevention Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N-0357]

RIN 0905-AA06

Hair Grower and Hair Loss Prevention Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any over-the-counter (OTC) hair grower or hair loss prevention drug product for external use is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final rule, and all new data and information on hair grower and hair loss prevention drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: January 8, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 7, 1980 (45 FR 73955), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify OTC hair grower and hair loss prevention drug products as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (Miscellaneous External Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by February 5, 1981. Reply comments in response to comments filed in the initial comment period could be submitted by March 9, 1981.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final rule, for hair grower and hair loss prevention drug products was published in the **Federal Register** of January 15, 1985 (50 FR 2190). Interested persons were invited to file by May 15, 1985, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by May 15, 1985. New data could have been submitted until January 15, 1986, and comments on the new data until March 17, 1986. Final agency action occurs with the publication of this final rule on OTC hair grower and hair loss prevention drug products.

As discussed in the proposed regulation for OTC hair grower and hair loss prevention drug products (50 FR 2190), the agency advised that the drug products covered by this regulation would be subject to the regulation effective 6 months after the date of publication of the final rule in the **Federal Register**. On or after January 8, 1989, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved new drug application (NDA).

In response to the proposed rule on OTC hair grower and hair loss prevention drug products, 218 consumers and 4 manufacturers submitted comments. No requests for oral hearing before the Commissioner were received. Copies of the comments received are on public display in the Dockets Management Branch. Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

In proceeding with this final rule, the agency has considered all comments and changes in the procedural regulations.

I. The Agency's Conclusions on the Comments

A. General Comments

1. A number of comments agreed with the agency's proposal that currently marketed drug products containing active ingredients for OTC external use for hair grower and hair loss prevention are ineffective and should be eliminated from the OTC market. One comment said the proposal was long overdue and that purchasers of these drugs are bilked of millions of dollars each year. Another comment strongly supported the proposal in instances where manufacturers cannot substantiate their claims. Other comments stated that these drugs should either be shown to be effective before they are marketed or be taken off the market. Two comments pointed out that FDA's statutory mandate includes protection and promotion of the public health by ensuring that drugs are not only safe but also effective for their intended use.

2. One comment suggested that the proposal to ban from the market all topical nonprescription products claiming to grow hair or prevent baldness should be extended to include vitamin or "food supplement" products claimed to restore hair, prevent hair loss, or provide nourishment to the hair. Another comment stated that the agency's proposal to ban hair loss products should include control of fraudulent claims.

As noted in the tentative final monograph, this rulemaking covers only products for external use, i.e., all active ingredients and labeling claims for OTC drug products marketed for external (topical) use as hair growers or for hair loss prevention. (See comment 8 at 50 FR 2193.) Upon the effective date of the final rule, any OTC drug product that is labeled, represented, or promoted for external use as a hair grower or for hair loss prevention will be a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321(p)), for which an approved NDA under section 505 of the act (21 U.S.C. 355) is required for marketing. In the absence of an approved NDA, marketing of these products would be a violation of sections 505(a) and 301(d) of the act (21 U.S.C. 355(a) and 331(d)). Such products are also considered misbranded under section 502 of the act (21 U.S.C. 352). The marketing of unapproved new drugs or misbranded drugs subjects them to regulatory action.

The agency emphasizes that orally ingested products marketed for the same or similar hair grower or hair loss prevention indications are also subject to regulatory action. Such products are presently marketed as vitamins, "food supplements," or other orally ingested products. These products are frequently marketed with claims making them "drugs" within the meaning of section 201(g) of the act (21 U.S.C. 321(g)). (See 50 FR at 2193). Any orally ingested drug product marketed for these indications

must be generally recognized as safe and effective (21 U.S.C. 321(p)) or the subject of an approved NDA. As with external drug products covered by this rulemaking, in the absence of an approved NDA, the marketing of these orally ingested drug products would be a violation of sections 505(a) and 301(d) of the act (21 U.S.C. 355(a) and 331(d)). Such products would also be misbranded under section 502 of the act (21 U.S.C. 352). Because orally ingested drug products for these indications are not covered by any OTC drug rulemaking, regulatory actions for these products will be handled on a case-by-case basis.

FDA Compliance Policy Guide 7132b.15 (Ref. 1) generally defers regulatory action for OTC drug products pending the establishment of a final monograph covering the products involved. On the effective date of this final rule, Compliance Policy guide 7132b.15 is revoked with respect to all OTC drug products, whether topical or orally ingested, that are marketed with hair grower, hair loss prevention, or similar claims.

Reference

(1) OTC Drugs—General Provisions and Administrative Procedures for Recognition as Safe and Effective, Office of Enforcement, Division of Compliance Policy, Associate Commissioner for Regulatory Affairs, Compliance Policy Guide No. 7132b.15, Food and Drug Administration, 1987.

3. A number of comments contained testimonials from consumers for several drug products labeled for hair growth and hair loss prevention. The comments wanted to continue using the products and did not want them taken off the market. Many of these comments supported a particular product which they claimed reduced or stopped hair loss, thickened hair, and in some cases stimulated hair growth. One comment considered the proposed FDA restriction too stringent and stated that it took away the right of choice. This comment contended that the most that should be done is to label herbal preparations as "not approved by the AMA or FDA as being of value in hair loss * * *". Two comments contended that it was unjust to prohibit the sale of products that perform as advertised or make a claim which a company can support, even though such products were not reviewed by the Panel or the agency. (See also comment 5 below for a discussion of one of these products.)

The agency discussed "freedom of choice" and statutory standards for marketing OTC drug products in the tentative final rule. (See 50 FR 2190 at 2191.) Agency regulations in 21 CFR 330.10(a)(4)(ii) state that standards for effectiveness include a requirement for controlled clinical investigations. Isolated case reports, random experience, and reports lacking the details that permit scientific evaluation are not considered adequate to establish effectiveness. As mentioned in the tentative final rule, testimonials from consumers cannot be considered as adequate proof of effectiveness or safety (50 FR 2194 and 2195).

FDA has a statutory mandate to ensure that all OTC drug products are safe and effective for their intended use. The status of OTC topical hair grower and hair loss prevention drug products is being determined in this rulemaking. Such products have been found not to be generally recognized as safe and effective. Therefore, a labeling statement that the product has not been approved by FDA for a particular use, as one comment suggested, would be meaningless because under the act the products cannot be marketed in any event.

4. One individual submitted information on personal research performed on hair loss. The information included a discussion of the cause, prevention, and cure of male pattern baldness. According to the research theory, reduced circulation in the scalp is implicated in male pattern baldness. However, because the research did not include any information on specific products or ingredients, the agency cannot evaluate it as part of this rulemaking.

B. Comments on Hair Grower and Hair Loss Prevention Drug Products

5. One comment referred to a product that it claimed helped many individuals reduce excessive hair loss and in many cases allowed new hair growth for individuals affected by androgenic alopecia (male pattern baldness). The comment explained that the product was not developed until 1983 and, therefore, was not considered by the Panel. However, according to the comment, the ingredients were all approved by FDA for OTC human use. The comment stated that it had monitored a group of test subjects for periods ranging from 8 to 15 months, that all subjects showed no increased baldness, and that at least 60 percent of the subjects noticed varying degrees of new hair growth. The comment also submitted numerous signed testimonials from customers who claimed reduction of excessive hair loss and/or new hair growth while using the product. The comment informed the agency that it would submit a testing protocol for future planned testing of the product, by October 15, 1985. Subsequently, the comment indicated by letter (Ref. 1) that the submission of the protocol would be delayed.

The agency is unable to assess the safety and effectiveness of the product referred to by the comment because the comment did not identify the specific ingredient(s) contained in it. In addition, the comment did not submit sufficient data to support safety and effectiveness. As stated in comment 3 above, reports lacking the details that permit scientific evaluation, such as the 8- to 15-month monitoring of test subjects described by the comment, and consumers' testimonials are not adequate to establish effectiveness. Further, the testing protocol mentioned by the comment was never submitted. In the absence of any information regarding the active ingredient(s) and without safety and effectiveness data, the product cannot be evaluated for possible inclusion in a monograph.

Reference

(1) Comment No. LET00025, Docket No. 80N–0357, Dockets Management Branch.

6. One comment described two products, a shampoo and a scalp cleanser/conditioner, containing a surfactant that purportedly combines with excess oil in the hair and helps to stop hair fallout by removing excess oil and allowing normal hair growth to resume. The comment provided consumer testimonials containing statements that the product stopped abnormal hair fallout and in some cases caused regrowth of hair.

The comment did not identify the ingredient(s) present in the products and did not provide a copy of the products' labeling. The agency informed the company of the need for more information about the products, including ingredients, claims made on the labels, data from studies, and any other information relating to the safety and effectiveness of the ingredients (Ref. 1). No further information has been received from the company. In the absence of any information regarding the active ingredient(s) and without safety and effectiveness data, the products cannot be evaluated for possible inclusion in a monograph.

Reference

(1) Letter from W.E. Gilbertson, FDA, to R. Tepper, Growth Plus Laboratories, coded LET00022, Docket No. 80N–0357, Dockets Management Branch.

7. One manufacturer submitted data (Ref. 1) to support the effectiveness of a

scalp hygiene regimen for sebum hair loss that listed a number of ingredients, including estradiol. The data included a protocol and information on hair fall counts from a preliminary study; a protocol, information on hair fall counts, and photographs related to hair density and hair growth measurements from the main study; and a summary of two clinical studies involving ingredients other than estradiol and comparing hygiene regimen treatments with placebos. The instructions provided by the manufacturer for the treatment regimen also claimed that hair growth is stimulated.

The Miscellaneous External Panel reviewed and evaluated data on estradiol and the other ingredients in the manufacturer's products for "sebum hair loss" (45 FR 73955 at 73958 and 73959). The Panel concluded that the available data failed to demonstrate the effectiveness of the ingredients, and classified estradiol as not generally recognized as being effective and as being misbranded for OTC use (45 FR 73958). In the tentative final monograph, the agency noted that doses of estradiol that were safe for OTC use were not found by the Panel to be effective (50 FR 2190 at 2194) and tentatively adopted the Panel's recommendation that all OTC drug products labeled for external use as a hair grower or for hair loss prevention be classified Category II (not generally recognized as safe and effective) (50 FR 2196).

Regarding the manufacturer's claim that its scalp regimen was for "sebum hair loss," the Panel noted that the theory that sebum can cause hair loss is not generally accepted by the medical profession today. The Panel stated that studies have shown no quantitative difference in the normal amount of sebum and the hourly production of sebum on the bald scalp, the hairy scalp of balding men, and the scalp of men who showed no baldness (45 FR 73955 at 73958). In the notice of proposed rulemaking for OTC hair grower and hair loss prevention drug products, the agency agreed with the Panel that hair loss has not been shown to be related to the production of sebum (50 FR 2190 at 2195, comment 13). Data to show that sebum causes hair loss have not been submitted since the notice of proposed rulemaking was published. Further, Orentreich, a leading dermatologist, indicated that sebum contains very high concentrations of dihydrotestosterone, which is associated with hair loss (Ref. 2). However, he noted that although the androgen in sebum has been measured, it has not been shown that dihydrotestosterone is the sebum can partition out of the sebum into the skin. Moreover, no scientific study has shown that shampooing the scalp frequently, to reduce sebum on the scalp, has any effect in reducing dihydrotestosterone and thereby reducing hair loss.

Daily shampooing and cleansing of the scalp with the manufacturer's treatment as well as placebo appeared to reduce shedding of hair in the submitted studies (Ref. 1). The Panel noted that daily shampooing with any nonmedicated shampoo would remove surface oil, scale, and loose hairs (45 FR 73955 at 73959). This phenomenon was discussed at one of the Panel's meetings (Ref. 2) in a presentation by Orentreich, who indicated that normally 100 hairs are shed per day, 700 a week. On the first day of shampooing, 300 hairs will be shed, the next day 25, the next day 50, the next day 75, then back to 100 hairs a day. The more often the hair is shampooed, the less hair loss occurs per shampoo. For example, if an individual shampoos once a week, 700 hairs will be shed; if an individual shampoos once in 2 weeks, 1,400 hairs will be shed. Another important factor discussed by Orentreich as affecting hair shedding is seasonal cycles, with October, November, and December being months of greater shedding, with shedding heaviest in November. As stated by Orentreich, awareness of these two factors (shampooing and seasonal shedding cycles) is important in any evaluation of a product claiming hair loss prevention. The agency notes that some subjects were evaluated during the months of October, November, December, while some subjects were evaluated in other months. There is no indication that the manufacturer considered seasonal shedding cycles in any of its data analyses. There is also no showing of the impact that the failure to consider this factor had on the results obtained.

The data in the preliminary tests consisted of daily counts of hair loss in three groups, each using a different regimen (estradiol, hygiene, and placebo) during pretreatment and treatment phases. The scalps of the subjects in the estradiol and hygiene groups were treated daily with a conditioner, cleanser, shampoo, and antiseptic dressing. The estradiol group received an application of a lotion containing estradiol 0.011 milligram per fluid ounce. The hygiene group received a lotion without estradiol. The third group received a placebo regimen and was the control group. The preliminary tests were done to check study parameters before beginning the main study.

The main study of prevention of hair loss was a double-blind test designed to evaluate the effectiveness of estradiol in an isopropyl alcohol vehicle after the hair was treated with a conditioner, cleanser, and shampoo. The data for this study consisted of raw data on sheets containing the test subjects' hair fall counts, hair density counts from a photographic technique, and photographs of scalp test areas designed to evaluate changes in the number of hairs per square centimeter of scalp, changes in the morphology of the hair in the study site, and changes in linear growth. Initially, the manufacturer indicated that estradiol played an important role in controlling hair loss, and the test objectives included determining the effectiveness of estradiol treatment for reducing hair fall and possibly stimulating hair growth. After completing the studies, the manufacturer concluded that most of the effects on hair fall and any resulting change in scalp hair densities were due mostly to the scalp hygiene regimen tested along with the estradiol treatment. However, the agency notes that the statistical analysis of the study, dated June 21, 1988, and prepared by the manufacturer's consultant (Ref. 3), does not support the company's conclusion. This analysis indicated that while there was improvement with all three of the regimens tested, hair fall counts decreased at a faster rate in the estradiol group.

As part of the main study, the three regimens were tested in subjects with hair loss less than and greater than 80 hairs per day. The manufacturer indicated that in the group with low hair fall the estradiol regimen results were not significantly different from the results for the other two regimens, and in the group with high hair fall, the subjects did not stay in the study long enough to provide a sufficient number of subjects for proper analysis of the results. Although stated to be statistically insignificant by the manufacturer, the consultant's analysis of the exact hair counts, based on pictures of scalp areas, indicated that some improvement occurred with all three regimens used but that there was no clear differentiation among the groups.

The consultant's statistical analysis is based on a linear least squares fit of log transformed average weekly hair fall counts as a function of week since the beginning of the study. Using this type of analysis, the slope of a linear regression line which is significantly less than zero would imply an overall decreasing trend in hair fall over time. The agency agrees

with this concept. However, as discussed below, the agency has determined that simple linear regression models are not the appropriate method of analysis for the data obtained from these studies.

The consultant's method of analysis compared the following treatment groups in the preliminary tests: (1) Low order daily hygiene plus placebo, (2) high order daily hygiene plus placebo, and (3) high order daily hygiene plus estrogen. The method of analysis used in the main study compared the following treatment groups: (1) Full regimen plus estrogen, high hair fall group, (2) full regimen plus estrogen, low hair fall group, (3) full regimen plus placebo, high hair fall group, (4) full regimen plus placebo, low hair fall group, (5) low order regimen plus placebo, high hair fall group, and (6) low order regimen plus placebo, low hair fall group. (High hair fall denotes an average of at least 80 hairs per day before treatment, and low hair fall signifies less than 80 hairs.) The agency finds that this method of analysis is valid provided the data in each of the treatment groups can be adequately modeled by a simple linear regression model. However, the agency points out that a simpler and more direct comparison of the treatment groups with respect to decreasing hair fall could be accomplished by just analyzing change from baseline scores at the end of the treatment period after adjusting for baseline differences between the treatment groups (if any).

The agency has reanalyzed the data from both the preliminary tests and the main study. The agency has determined that simple linear regression models are not the best fit of the data in the treatment groups. Specifically, investigation of the scatter plot of the high order daily hygiene plus estrogen data (average daily hair fall (AHF) vs. week) indicates a definite change in the trend of the data between week 7 and 8. Conventional statistical model-building techniques dictate use of a piecewise linear model, i.e., a model which fits separate linear regression models to both pieces of the data. For both the high and low order daily hygiene plus placebo data, scrutiny of residual plots reveals a curvilinear trend in the residuals over time. Again, statistical model-building methods imply that the high and low order daily hygiene plus placebo data require at least a quadratic regression model. When these (nonlinear) models are fit to the data, the slope comparison criterion proposed by the manufacturer's consultant is not feasible. Similarly, the single model (i.e., log (AHF) = week) used by the manufacturer's consultant for all six subsets of the data in the main study is not the model that best fits the data. The agency finds that the statistical significance of estradiol over placebo has not been demonstrated. The agency concludes that these data do not establish that estradiol is effective for hair loss reduction.

The summary of the two clinical studies described double-blind, comparative tests on individuals with varying degrees of daily hair loss. These studies appear to be adjuncts to the main study because they involved evaluation of various daily hygiene regimes. In one study, a daily hygiene regimen involved treatment with a mixture of isopropyl alcohol and methyl ethyl ketone, a sulfonated oil mixture, and a strong shampoo with ammonium lauryl sulfate base. That regimen was compared with a placebo regimen in which placebos replaced the treatment ingredients and a shampoo of moderate strength with an amphoteric base replaced the strong shampoo. The second study was similar except that a strong shampoo was used 4 days a week, and the results were compared to a placebo regimen using a weak shampoo 3 days a week. The treatment regimen included a sulfonated oil mixture, a strong shampoo with an ammonium lauryl sulfate base (4 days a week), and a mild amphoteric base shampoo (3 days a week). The placebo regimen consisted of only three shampoos a week with use of a placebo oil mixture, placebo shampoo (water and dye), and a mild amphoteric base shampoo.

The results of these two clinical studies appeared to show that daily shampooing over a long period of time, regardless of ingredients, reduced hair fall, but there were no significant differences in hair loss reduction between the two groups in both studies. The summary of the two clinical studies lacks the detail necessary for the agency to evaluate any significant effectiveness of the different regimens. In addition, the number of subjects participating in the studies was not given. The agency concludes that these studies do not provide sufficient data to demonstrate that daily shampooing, using either a drug or cosmetic product, affects hair loss reduction.

After reviewing the available data, the agency concludes that the studies are not sufficient to support Category I status for the claims of hair loss prevention or hair growth. The claim for hair growth is not well-documented because the study model is short and poorly controlled. Regarding the claim for hair loss prevention, there appeared to be a trend to reduce shedding of hair based on increased shampooing and cleansing of the scalp with the products tested: cleanser, plus estradiol and placebo. There was a slight indication in the study that estradiol, with the cleansing agents, could be more helpful. However, to fully establish the claim of decreased hair loss (rather than prevention), it would be necessary to conduct a controlled 6- to 12-month double-blind study, preferably with crossover, with adequate numbers of patients (in the hundreds) in order to generate data sufficient for appropriate statistical review.

In conclusion, the agency has determined that estradiol is not generally recognized as safe and effective for claims of hair loss prevention and hair growth. Accordingly, estradiol is a nonmonograph ingredient. The other ingredients in the manufacturer's scalp hygiene regimen were determined to be inactive ingredients by the Panel (45 FR 73955 at 73957). The agency concurs that these ingredients are not active drug ingredients for these claims. Further, shampoos and scalp cleansers used to cleanse the hair (and not labeled with any claims relating to hair loss prevention or hair growth) are cosmetics and are not covered by this rulemaking proceeding.

The agency recommends that in order to establish the general recognition of safety and effectiveness of a potential OTC hair grower drug product, studies similar to those performed for the evaluation of the safety and effectiveness of the only agency-approved hair growth drug product would be appropriate (Ref. 4). Although that particular product is marketed as a prescription drug product, the methods used to study it would be applicable for an OTC hair grower drug product.

There are no agency-approved OTC hair loss prevention drug products. The agency recommends that any person wishing to study the safety and effectiveness of such a drug product submit a protocol for agency review before beginning such studies.

References

(1) Comments No. C00254, C000268, RPT00002, and RPT00003, Docket No. 80N–0357, Dockets Management Branch.

(2) Transcript of Twenty-Ninth Meeting of the Advisory Review Panel on OTC Miscellaneous External Drug Products, January 14, 1979, pp. 63, 65, and 93–98.

(3) Comment No. RPT00003, Docket No. 80N–0357, Dockets Management Branch.

(4) NDA 19–501, Food and Drug Administration.

8. One comment submitted a protocol (Ref. 1) for a double-blind study of a hair treatment product containing biotin (versus placebo) to determine the comparative effects on excessive hair fall out and hair regrowth. At least 50 subjects with male pattern alopecia were to be evaluated.

The agency reviewed the protocol and found it deficient in a number of aspects: (1) The randomization procedure was not mentioned in the protocol. (2) The sample size was not a fixed number, but was a vague goal of more than 50, and the statistical rationale for a particular sample size was not given. (3) Statistical methods to analyze the hair loss data were not described in the protocol. (4) Procedures to rate the pictures of balding areas were not mentioned in the protocol. (Such a rating scheme for evaluating new hair growth needs to be clearly defined and validated across different blinded observers. However, nonparametric methods to be used for analyzing the photographic data were not presented in the protocol.) (5) Because the duration of the study was 1 year, incomplete observations were expected, yet the protocol did not mention how missing data and drop-outs from the study would be handled in the analysis. The agency concluded that without the above-listed information the protocol was not acceptable from a statistical viewpoint.

Subsequently, the comment submitted a protocol addendum (Ref. 2) addressing the agency's five comments. The agency reviewed the protocol addendum and concluded that the revised protocol also was not statistically acceptable until the following revisions were made:

(1) Revision of the randomization procedure for assigning successive subjects as they are accepted into the study;

(2) Analysis of the data using the method of analysis of covariance, adjusting for baseline values, to compare treatment groups with respect to the number of hairs lost;

(3) Revision of the method for comparing the proportion of successes in each treatment group.

The company's proposed "binomial test" was determined not to be appropriate because this was a parallel group study and there was no matching. The agency recommended using Fisher's exact test or the chi-square test.

Without these revisions, the agency concluded that the protocol was not acceptable from a statistical viewpoint. The agency's detailed comments are on file in the Dockets Management Branch (Ref. 3).

The agency did not receive any further response from the comment regarding this study protocol, nor has it received any study results from the comment. No other data were submitted for biotin. Accordingly, biotin is a nonmonograph ingredient.

References

(1) Comment No. LET016, Docket No. 70N–0357, Dockets Management Branch.

(2) Comment No. LET019, Docket No. 80N–0357, Dockets Management Branch.

(3) Letter from W.E. Gilbertson, FDA, to M.H. Shapiro, Kleinfeld, Kaplan and Becker, coded LET021, Docket No. 80N–0357, Dockets Management Branch.

II. The Agency's Final Conclusions on OTC Hair Grower and Hair Loss Prevention Drug Products

Although the Panel recommended that the hair grower and hair loss prevention active ingredients ascorbic acid, benzoic acid, estradiol (not to exceed 5.5 micrograms per day), lanolin, tetracaine hydrochloride, and wheat germ oil were safe, it did not find sufficient data to determine that any of these ingredients were generally recognized as effective for these uses in an OTC drug product. The agency has determined that none of these ingredients or any other hair grower or hair loss prevention active ingredient, including biotin, has been found to be generally recognized as safe and effective and not misbranded for use as a hair grower or for hair loss prevention. Therefore, all hair grower and hair loss prevention ingredients, including amino acids, aminobenzoic acid, ascorbic acid, benzoic acid, biotin and all other B-vitamins, dexpanthenol, estradiol and other topical hormones, jojoba oil, lanolin, nucleic acids, polysorbate 20, polysorbate 60, sulfanilamide, sulfur 1 percent on carbon in a fraction of paraffinic hydrocarbons, tetracaine hydrochloride, urea, and wheat germ oil, are considered nonmonograph ingredients and misbranded under section 502 of the act (21 U.S.C. 352) and are new drugs under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved NDA under section 505 of the act (21 U.S.C. 355) and Part 314 of the regulations (21 CFR Part 314) is required for marketing. As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in a citizen petition to establish a monograph. (See 21 CFR 10.30.) Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action.

No comments were received in response to the agency's request on January 15, 1985 (50 FR 2190 at 2197) for specific comment on the economic impact of this rulemaking. The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC hair grower and hair loss prevention drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC hair grower and hair loss prevention drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended in Part 310 to read as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1049–1053 as amended, 52 Stat. 1055–1056 as amended, 67 Stat. 477 as amended, 52 Stat. 1057–1058 (21 U.S.C. 351, 352, 353, 355, 371, 374, 375); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 310.527 is added to Subpart E to read as follows:

§ 310.527 Drug products containing active ingredients offered over-the-counter (OTC) for external use as hair growers or for hair loss prevention.

(a) Amino acids, aminobenzoic acid, ascorbic acid, benzoic acid, biotin and all other B-vitamins, dexpanthenol, estradiol and other topical hormones, jojoba oil, lanolin, nucleic acids, polysorbate 20, polysorbate 60, sulfanilamide, sulfur 1 percent on carbon in a fraction of paraffinic hydrocarbons, tetracaine hydrochloride, urea, and wheat germ oil have been marketed as ingredients in OTC drug products for external use as hair growers or for hair loss prevention. There is a lack of adequate data to establish general recognition of the safety and effectiveness of these or any other ingredients intended for OTC external use as a hair grower or for hair loss prevention. Based on evidence currently available, all labeling claims for OTC hair grower and hair loss prevention drug products for external use are either false, misleading, or unsupported by scientific data. Therefore, any OTC drug product for external use containing an ingredient offered for use as a hair grower or for hair loss prevention cannot be considered generally recognized as safe and effective for its intended use.

(b) Any OTC drug product that is labeled, represented, or promoted for external use as a hair grower or for hair loss prevention is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act), for which an approved new drug application under section 505 of the act and Part 314 of this chapter is required for marketing. In the absence of an approved new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC external use as a hair grower or for hair loss prevention is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in Part 312 of this chapter.

(d) After January 8, 1990, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Dated: April 28, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–15955 Filed 7–6–89; 8:45 am]

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federal register

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July 7, 1989

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Aphrodisiac Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 310

[Docket No. 80N-0419]

RIN 0905-AA06

Aphrodisiac Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any aphrodisiac drug product for over-the-counter (OTC) human use is not generally recognized as safe and effective and is misbranded. Aphrodisiac drug products claim to arouse or increase sexual desire (libido) or to improve sexual performance. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final rule, and all new data and information on aphrodisiac drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: January 8, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 1, 1982 (47 FR 43572), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify OTC aphrodisiac drug products as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based on the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by December 30, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 31, 1983.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final rule, for OTC aphrodisiac drug products was published in the Federal Register of January 15, 1985 (50 FR 2168). Interested persons were invited to file by May 15, 1985, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by May 15, 1985. New data could have been submitted until January 15, 1986, and comments on the new data until March 17, 1986. Final agency action occurs with the publication of this final rule on OTC aphrodisiac drug products.

As discussed in the proposed regulation for OTC aphrodisiac drug products (50 FR 2168), the agency advised that the drug products covered by this regulation would be subject to the regulation effective 6 months after the date of publication of the final rule in the Federal Register. On or after January 8, 1990, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved new drug application (NDA). If, in the future, any ingredient is determined to be generally recognized as safe and effective for use in an OTC aphrodisiac drug product, the agency will promulgate an appropriate regulation at that time.

In response to the proposed rule on OTC aphrodisiac drug products, 35 consumers and 2 health care groups submitted comments. Requests for oral hearing before the Commissioner were also received on seven different issues. Copies of the comments and the hearing requests received are on public display in the Dockets Management Branch. Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

In proceeding with this final rule, the agency has considered all objections, requests for oral hearings, and the changes in the procedural regulations.

I. The Agency's Conclusions on the Comments

1. Numerous comments requested that the notice of proposed rulemaking for aphrodisiac drug products for OTC use be withdrawn or, as an alternative, that a new Panel be convened with "appropriate," qualified experts including nutritionists, herbalists, sexologists, or physicians with expertise in sex therapy. The comments contended that the Miscellaneous Internal Panel lacked expertise in the fields relevant to the use of aphrodisiacs, and because the Panel did not consult a "biochemist, physician, psychologist, or other scientist with successful clinical experience using nutritional aphrodisiacs," it was in violation of FDA's own regulations under 21 CFR 330.10(a) which require that the Commissioner appoint "qualified experts" to the panel. The comments contended that the food supplement industry, food manufacturers, and the public have been denied the benefits of a full scientific discourse on aphrodisiac products by qualified experts in the field. The comments also requested a hearing on these issues before the Commissioner.

The comments further stated that the Miscellaneous Internal Panel, which was mandated to cover a wide variety of drugs, ranging from weight reduction ingredients to smoking deterrents, was a biased panel that regarded aphrodisiacs as a "throw away" as shown by the fact that only two studies on aphrodisiacs were reviewed, when additional data were available. Stating that the agency "does not like" aphrodisiac products, the comments claimed that the rather short "shrift" given these products by the Panel, along with the fact that none of the Panel members were experts in this field, suggests that the agency may have prejudged the entire issue of the safety and effectiveness of OTC aphrodisiacs.

The agency has determined that the Miscellaneous Internal Panel was qualified to review OTC aphrodisiac drug products and that such a panel was not in violation of FDA regulations. The Panel was composed of pharmacists and physicians. Although the Panel reviewed a wide variety of drugs, and Panel members were not specialists in aphrodisiac drug products, the agency believes that the scientific background and knowledge of the Panel were sufficient to provide an impartial and scientific review of the various classes of drug products that were evaluated. Further, representatives of consumer and industry interests served as nonvoting members of the Panel, and the Panel utilized consultants in pharmacognosy and statistics. In summary, the Panel was chosen carefully to insure representation from a variety of groups, and the Panel called

upon individuals with expertise in other fields as necessary.

All interested parties had the opportunity to appear before the Panel, but none made such a request. Further, no submissions of data were made to the Panel. The Panel on its own initiative found seven references concerning aphrodisiacs (47 FR 43572 at 43575). The agency reviewed two additional references that were submitted in response to the Panel's report (50 FR 2168 at 2169). Furthermore, as part of its review for this final rule, the agency has evaluated additional materials in this document. (See comment 8 below.)

The comments' contention that the entire issue of the safety and efficacy of OTC aphrodisiacs may have been prejudged by the agency is not supported by any factual basis. The agency concludes that this drug category has been reviewed in accordance with the administrative procedures set forth in 21 CFR 330.10 in the same manner as all other OTC drug categories included in the agency's OTC drug review program. Thus, the agency has not treated aphrodisiacs differently from any other class of drugs in the OTC drug review.

The agency also concludes that a hearing on this issue is not warranted. The comment related only to procedural matters and did not identify any factual issues relating to the safety or effectiveness of OTC aphrodisiac drug products.

2. One comment objected to the inclusion of topical aphrodisiacs in the proposed rulemaking for OTC aphrodisiac drug products (50 FR 2168 at 2169) on the grounds that neither the Panel nor the agency suggested inclusion of topical aphrodisiacs in the advance notice of proposed rulemaking for OTC aphrodisiac drug products (47 FR 43572). The comment stated that the Panel repeatedly indicated throughout its deliberations that only systemic aphrodisiacs would be considered, and that the advance notice of proposed rulemaking indicated that the rulemaking was restricted to products taken internally [or for oral use] (47 FR 43572). The comment contended that expanding the scope of the proposed regulation at the notice of proposed rulemaking stage to include topical aphrodisiacs as well as those taken internally violates standard administrative law principles of notice, is inconsistent with the requirement that the agency follow its own rules, and is not supported by adequate evidence or by the record. The comment requested a hearing on this matter before the Commissioner.

The agency disagrees with the comment. At the same time that the agency published its first call-for-data notice in the **Federal Register** requesting data on aphrodisiacs for internal use (38 FR 31696), the agency also requested data on all external OTC drug products "not previously the subject of a request for data and information for this OTC Review" (38 FR 31697). Any views regarding topical aphrodisiacs could have been presented at that time. A second opportunity for presenting data and information occurred when the agency made a second request for supplemental and original data and information (40 FR 38179), which covered both OTC miscellaneous external and internal drug products.

Further, there is no violation of administrative law principles resulting from the inclusion of OTC topical aphrodisiac drug products for the first time at the notice of proposed rulemaking stage because that document provided adequate notice and an opportunity for views on this subject to be considered before the rule is finalized. The notice of proposed rulemaking on OTC aphrodisiac drug products was published in the **Federal Register** of January 15, 1985 (50 FR 2168). As stated above, the agency provided adequate notice (12 months for new data, and an additional 2 months for comments on the new data) for interested persons to submit comments, objections, new data, or requests for oral hearing on both OTC internal and external aphrodisiac drug products. The comment is incorrect in suggesting that the agency cannot include material in a notice of proposed rulemaking that was not contained in an advance notice of proposed rulemaking.

The agency also concludes that a hearing on this issue is not warranted. The comment related only to legal interpretations and procedural matters and did not identify any factual issues related to the safety or effectiveness of OTC aphrodisiac drug products.

3. Numerous comments contended that herbs, vitamins, minerals, amino acids, and other foods truthfully labeled with non-misleading aphrodisiac claims should not be regulated as prescription drugs. The comments requested that FDA hold a full public oral hearing and then withdraw or amend its proposed rulemaking on aphrodisiacs before issuing a final rule.

One comment claimed that aphrodisiacs are not drugs under section 201(g)(1)(B) of the act (21 U.S.C. 321(g)(1)(B)) because they are not necessarily used to cure, mitigate, treat, or prevent a disease. The comment also argued that many products with aphrodisiac claims, e.g., zinc, licorice, mandrake, fennel, and anise, are clearly foods and are expressly excluded by the parenthetical phrase (other than food) from the definition of drug under section 201(g)(1)(C) of the act (21 U.S.C. 321(g)(1)(C)). The comment concluded that claims such as "arouses or increases sexual desire * * *" or "improves performance * * *," which were listed as Category II in the notice of proposed rulemaking (50 FR 2170), are not drug claims because a person who takes what is otherwise a food for these purposes is not thereby taking a drug for a disease.

The act defines a drug as "(A) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any articles specified in clause (A), (B), or (C); but does not include devices or their components, parts, or accessories" (21 U.S.C. 321(g)(1)). The act defines a food as "(1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article" (21 U.S.C. 321(f)).

It is well established that the definitions of "food" and "drug" in 21 U.S.C. 321 (f) and (g)(1) are not mutually exclusive. An article of "food" that is intended for use in the treatment of disease may also be a "drug" under 21 U.S.C. 321(g)(1)(B) of the act. See *Nutrilab, Inc.* v. *Schweiker*, 713 F.2d 335, 336 (7th Cir. 1983) and cases cited therein. Accordingly, when articles of food are marketed as aphrodisiacs for use in the cure, mitigation, or treatment of sexual dysfunction, or related disease conditions, they are drugs under 21 U.S.C. 321(g)(1)(B).

The comment's assertion that the "other than food" exception in 21 U.S.C. 321(g)(1)(C) applies to aphrodisiac products is also without merit. The Court in the *Nutrilab* case, *supra*, noted that double use of the word "food" in 21 U.S.C. 321(f) requires careful analysis of the parenthetical "other than food" exclusion in the drug definition in 21 U.S.C. 321(g)(1)(C). The Court stated that in the exclusion Congress obviously meant a drug to be something "other than food," but it is not clear whether Congress was referring to "food" as a term of art in the statutory sense or to

food in its ordinary meaning. The Court stated that because all foods are "intended to affect the structure or any function of the body of man or other animals" and would thus come within the Part C drug definition exclusion, presumably Congress meant to exclude only common-sense foods. The Court concluded that when the act defines "food" as "articles used for food," it means that the statutory definition of "food" includes articles used by people in the ordinary way most people use food—primarily for taste, aroma, or nutritive value.

Articles containing ingredients that have food uses but that are marketed with claims for their aphrodisiac effects do not meet the exception for food in 21 U.S.C. 321(g)(1)(C). The claims made for these products make clear that their primary intended use is to improve sexual performance or to increase sexual desire, both of which are functions of the body within the meaning of 21 U.S.C. 321(g)(1)(C). These products are not intended to be used as a food—that is, they are not intended to be consumed for their taste, aroma, or nutritive value.

Thus, in determining whether a product is a food or a drug, the agency considers the purpose for which a particular ingredient or product is intended. For example, starch blockers, which are prepared from raw beans, and spirulina, which is derived from algae, have both been declared by the agency to be drugs because of the claimed effects of the products on the function of the body. In both instances, the manufacturers were promoting products containing these ingredients for nonfood purposes, even though both are derived from plant sources. The starch blockers were claimed to block or interfere with digestion of starch (Ref. 1), and spirulina was claimed to act on the brain's appetite center (Ref. 2). The Court in the *Nutrilab* case, *supra*, stated that starch blockers were drugs under 21 U.S.C. 321(g)(1)(C). The Court found that they indisputably satisfy the requirement of "intended to affect the structure or any function of the body of man or other animals" because they are intended to affect digestion in the people who take them.

Similarly, aphrodisiacs are drugs because they are offered for a non-food purpose (i.e., other than for their taste, aroma, or nutritive value) and purport to affect the function of the body. The Panel defined an aphrodisiac as "any drug which is claimed to arouse or increase sexual desire or improve sexual performance," (47 FR 43572 at 43573). Dorland's (Ref. 3) defines an aphrodisiac as exciting the libido or any drug that arouses the sexual instinct. Food, in contrast, when used in the ordinary way is not intended for these purposes. Accordingly, products containing ingredients that are intended to be used as aphrodisiacs, whether or not these ingredients have food uses, and making aphrodisiac claims are clearly drugs within the definition of 21 U.S.C. 321(g)(1)(C).

The agency also notes that some aphrodisiacs have been traditionally sold as drugs (Ref. 4). Yohimbine, for example, has been marketed as a prescription drug (5 milligram (mg) tablet) with indications such as used "experimentally for the treatment and the diagnostic classification of certain types of male erectile impotence" and "may have activity as an aphrodisiac," (Ref. 4). (Additional discussion of prescription versus OTC status is contained in comment 6 below.)

In conclusion, ingredients that are derived from normal food items but that are sold for their aphrodisiac effects are drugs and not foods because they are intended to treat a disease condition or because they are intended to affect the function of the body. The Commissioner also concludes that a hearing on this issue is not warranted. The issue relates solely to the legal question of whether aphrodisiacs are drugs and does not raise factual matters relating to the safety or effectiveness of OTC aphrodisiac drug products.

References

(1) HHS News, FDA, News Release, Subject: Starch Blockers, July 1, 1982.

(2) Talk Paper, FDA, "Spirulina," June 23, 1981.

(3) "Dorland's Illustrated Medical Dictionary," 27th Ed., W.B. Saunders Co., Philadelphia, 1988, s.v. "aphrodisiac."

(4) Huff, B.B., editor, "Physicians' Desk Reference," 42d Ed., Medical Economics Publishing Co., Oradell, NJ, pp. 1111–1112, 1521, 2076, 1988.

4. One comment stated that it is well-established in botanical application in the healing arts of India, known as "Ayurveda" and "Kayakalpa," that a variety of herbs and food sources, such as asparagus and mineral pitch, serve to "revitalize and rejuvenate the human organism" leading to "increased sexual stamina and improved performance." The comment cited two references and requested a hearing on this subject before the Commissioner, adding that further references and expert testimony will be presented at the hearing (Ref. 1).

The agency emphasizes that the purpose of the OTC drug review is to determine whether there is general recognition of the safety and efficacy of particular classes of drugs used for self-medication. Therapeutic practices and procedures such as the "healing arts of India" and their relation to certain food sources are outside the scope of the OTC drug review. The agency also concludes that a hearing on this issue is not warranted because no genuine issues of material facts were raised relating to the safety and effectiveness of particular ingredients used in OTC aphrodisiac drug products.

Reference

(1) Comment No. HER002, Docket No. 80N–0419, Dockets Management Branch.

5. One comment stated that even if aphrodisiacs are found to be drugs, they are not new drugs. The comment explained that since these drugs have been used in this manner for centuries, as noted by FDA at 47 FR 43572 to 43574, they are exempt from the NDA requirement of section 505 of the act (21 U.S.C. 355) because they are "grandfathered." The comment further cited examples of use of these drugs dating back to biblical times. The comment requested a hearing on this issue before the Commissioner.

To qualify for exemption from the "new drug" definition under the 1938 grandfather clause of the act, the drug product must have been subject to the Food and Drug Act of 1906, prior to June 25, 1938, and at such time its labeling must have contained the same representations concerning the conditions of its use (21 U.S.C. 321(p)(1)). Under the 1962 grandfather clause of the act, a drug product which on October 9, 1962, (1) was commercially used or sold in the United States, (2) was not a "new drug" as defined in the 1938 act, and (3) was not covered by an effective NDA under the 1938 act, would not be subject to the added requirement of effectiveness "when intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug on that day." Pub. L. 87–781, section 107(c)(4), 76 Stat. 788, note following 21 U.S.C. 321.

The person seeking to show that a drug comes within a grandfather exemption must prove every essential fact necessary for invocation of the exemption. See *United States* v. *An Article of Drug * * * "Bentex Ulcerine,"* 469 F.2d 875, 878 (5th Cir. 1972), *cert. denied*, 412 U.S. 938 (1973). Furthermore, the grandfather clause will be strictly construed against one who invokes it. See *id.*; *United States* v. *Allan Drug Corp.*, 357 F.2d 713, 718 (10th Cir.), *cert. denied*, 385 U.S. 899 (1966). A change in composition or labeling precludes the

applicability of the grandfather exemption. See *USV Pharmaceutical Corp.* v. *Weinberger*, 412 U.S. 655, 663 (1973).

No evidence was submitted to the agency to show that the labeling and composition of aphrodisiac drug products have remained unchanged since either 1938 or 1962. Without such evidence, the products cannot qualify for either grandfather exemption. The burden of proof with respect to the grandfather exemption is not on FDA, but on the person seeking the exemption. See *An Article of Drug * * * "Bentex Ulcerine," supra.*

In any event, the 1938 and 1962 grandfather clauses apply only to the new drug provisions of the act and not to the adulteration and misbranding provisions. The OTC drug review was designed to implement both the misbranding and the new drug provisions of the act. [See 21 CFR 330.10; 37 FR 9466 (May 11, 1972)]. The grandfather clauses do not preclude the agency from reviewing any currently marketed OTC drug, regardless of whether it has grandfather protection from the new drug provisions, in order to ensure that the drug is not misbranded.

The agency concludes that a hearing on this issue is not warranted; the question of whether a drug is a "new drug" is a matter of law and not a material and substantial issue of fact that could be resolved at a hearing.

6. One comment contended that the agency's conclusions regarding self-medication with aphrodisiacs are inconsistent with the law and public policy. The comment stated that the agency had erroneously based its "conclusion that OTC distribution of these substances is inappropriate on the nature of the condition, not on the risks of the product." The comment argued that none of the criteria for restricting a drug to prescription status as set forth in section 503(b)(1) of the act (21 U.S.C. 353(b)(1)) apply to aphrodisiac drug products, i.e., (1) there is no evidence that yohimbine or other herbs are habit-forming drugs to which section 502(d) of the act (21 U.S.C. 352(d)) applies; (2) there is no indication of toxicity or other potentially harmful effect, method of use, or collateral measures necessary to use that make these products not safe except for use under the supervision of a doctor; or (3) the product is not limited by an approved application under section 505 of the act (21 U.S.C. 355) to use under professional supervision. In addition, the comment asserted that a disorder such as impotence is appropriate for self-medication because in the majority of cases it is not a serious medical disorder and cited an article by Slag et al. (Ref. 1) in support of this position. The comment requested a hearing on this issue before the Commissioner.

The agency disagrees with the comment. The OTC drug review is determining whether aphrodisiac drug products intended for OTC use are generally recognized as safe and effective for OTC use. There is no evidence to establish that such drug products are generally recognized as safe and effective. Therefore, an approved NDA is required to permit marketing of such products. The prescription or OTC status for aphrodisiac drug products will be determined in conjunction with the evaluation of safety and effectiveness data submitted, if any, in support of an NDA. The agency emphasizes that this rulemaking does not, in itself, restrict all aphrodisiac drug products to prescription status. If the data submitted as part of an NDA support OTC marketing for a particular aphrodisiac drug product, then such a product could be marketed OTC under the NDA.

However, as previously stated in both the Panel's report (47 FR 43572 at 43575) and the tentative final monograph (50 FR 2168 at 2169), the agency believes that, based on the data available to date, individuals suffering from decreased libido and impaired sexual performance should seek treatment under professional supervision. Moreover, the agency believes that the study on impotence cited by the comment (Ref. 1), rather than illustrating the suitability of aphrodisiacs for OTC use, gives support to the position that these types of products should be restricted to use under a physician's supervision. Impotence is defined by Dorland (Ref. 2) as the lack of power, chiefly of copulative power in the male due to failure to initiate an erection or to maintain an erection until ejaculation. It may be atonic, due to paralysis of the motor nerves without evidence of lesion of the central nervous system; paretic, due to lesion in the central nervous system, particularly in the spinal cord; psychic, dependent on mental complex; or symptomatic, due to some other disorder, such as injury to nerves in the perineal region, by virtue of which the sensory portion of the erection reflex arc is interrupted. The article (Ref. 1) identifies a number of reasons for impotence, including medication effect, psychogenic causes, neurological and cardiovascular complications, diabetes, and hormonal imbalances. The agency believes that this information strongly suggests that a physician's diagnostic expertise is warranted before a sexual dysfunction condition is treated and a physician's supervision is required during treatment in order to monitor its progress.

The agency disagrees with the comment that the criteria for restricting a drug to prescription status (as set forth in section 503(b)(1) of the act) may not be applicable to some or all aphrodisiac drug products. The statutory criteria in section 503(b)(1)(B) of the act could be applicable to all or some aphrodisiac drugs. The collateral measures necessary to use, e.g., the need for a physician to diagnose the condition, determine its cause, and determine whether drug treatment is the appropriate therapy, are important factors in determining whether aphrodisiac drug products should be marketed OTC or on a prescription basis. The Panel stated that sexual drive (libido) and sexual performance are governed by multiple factors, the most common of which are psychological, and that impotence and frigidity have often been successfully treated by psychotherapy (47 FR 43572 at 43574). If the psychotherapy included drug treatment, it would have to be under a physician's supervision. The Panel further noted that hormonal factors also affected libido (47 FR 43572 at 43574). Any hormonal imbalance would also have to be treated by a physician.

In addition, the agency is concerned that the OTC use of some aphrodisiac drugs could present a safety concern, thus falling within the "toxicity or other potentiality for harmful effect" provision of section 503(b)(1)(B) of the act. The agency is aware that several manufacturers currently market products containing yohimbine hydrochloride as a prescription drug indicated as a sympathicolytic and mydriatic, with possible activity as an aphrodisiac (Ref. 3). The package inserts for these products state that the action of yohimbine on peripheral blood vessels is similar to that of reserpine (which is a prescription drug). It is also stated that yohimbine exerts a stimulating action on mood and can increase anxiety, but that these actions have not been adequately studied or related to dosage. The only contraindications provided are sensitivity to the drug and renal diseases. However, the statement is made that "no additional contraindications can be offered due to the limited and inadequate information available." A warning is provided that the drug is not for use in cardio-renal patients with gastric or duodenal history or in geriatric patients. It is also stated that the drug should not be used in

conjunction with mood modifying agents such as antidepressants, nor in psychiatric patients. In addition, a number of adverse reactions are listed, e.g., antidiuresis, central excitation, elevation of blood pressure and heart rate, tremor, and increased motor activity.

The agency also has some concerns about yohimbine being available as an OTC drug because of reports of its stimulant and hallucinogenic properties (Refs. 4 and 5). In addition, the agency is aware of at least two reports of adverse reactions involving overdoses of yohimbine (Refs. 5 and 6). A 2½-year-old boy died due to direct toxic effects on the capillaries after ingesting 300 to 400 mg of yohimbine hydrochloride, and a 16-year-old girl suffered from headache, hallucinations, dizziness, chest pains, and partial hearing loss after ingesting 250 mg of yohimbine. Although the reported dosage was high, the reports indicate potential problems in having a safe OTC dose for this ingredient. For the above reasons, the agency is of the opinion that the "toxicity and other potentiality for harmful effect" provision of section 503(b)(1)(B) of the act applies to drug products containing yohimbine or any of its derivatives. However, it is possible that other aphrodisiac ingredients may be safe for OTC use if efficacy is eventually established under appropriate NDA approval procedures.

The agency also concludes that a hearing on this issue is not warranted because issues of material and substantial facts were not raised relating to the safety or effectiveness of ingredients used in OTC aphrodisiac drug products.

References

(1) Slag, M.F., et al., "Impotence in Medical Clinic Outpatients," *The Journal of the American Medical Association*, 249:1736–1740, 1983.

(2) "Dorland's Illustrated Medical Dictionary," 26th Ed., W.B. Saunders Company, Philadelphia, 1981, s.v. "yohimbine."

(3) Huff, B.B., editor, "Physicians' Desk Reference," 42d Ed., Medical Economics Publishing Co., Oradell, NJ, pp. 1111–1112, 1521, 2076, 1988.

(4) Spoerke, D.G., "Topic: Plants—Yohimbine," contained in computerized list: Poisindex® Substance Identification, Vol. 57, Micromedex, Inc., August 1988.

(5) Linden, C.H., et al., "Yohimbine: A New Street Drug," *Annals of Emergency Medicine*, 14:1002–1004, 1985.

(6) Patscheider, H., and R. Dirnhofer, "Fatal Poisoning of a Small Child by Yohimbine," *Beitrage Zur Gerichtlichen Medizin*, 30:336–344, 1973.

7. One comment contended that the agency's determination that aphrodisiac products are to be available only on a prescription basis, or not at all, will have a severe economic impact that the agency has not considered. The comment stated that this decision will increase costs by requiring people who want to use these products for "enhancement of sexual pleasure" to do so under the supervision of a physician and to incur the costs of visits to physicians, which is a "hardly cost-effective" means of dealing with these people's desires. The comment also cited several examples of the agency's and Congress' traditionally favorable view of the concept of self-medication.

The comment submitted no documentation in support of its contention that a severe economic impact will occur, and the agency points out that it has not made a decision that all aphrodisiac drugs products are to be sold only by prescription. (See comment 6 above.) The agency has concluded at this time that the traditionally-used aphrodisiac ingredients have not been shown to be generally recognized as safe and effective for OTC use based on currently-available data and, therefore, these products will require an approved NDA for marketing. In addition, the agency has determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. (See Part II. below—The Agency's Final Conclusions on OTC Aphrodisiac Drug Products.)

The agency therefore concludes that not one of these rules, including this final rule for OTC aphrodisiac drug products, is a major rule. Accordingly, the agency finds that issuance of this final rule will not have an adverse economic impact on consumers.

8. Many comments contended that yohimbine is an effective aphrodisiac. Citing a number of supporting references (Refs. 1 through 8), one comment maintained that sufficient data exist to demonstrate the effectiveness of "yohimbe" and other herbs for aphrodisiac use. (The comment stated that it used the term "yohimbe" to include the ingredient's derivatives such as yohimbine, yohimbinum, and yohimbine hydrochloride. The agency is using the term yohimbine in this document to refer collectively to all of these ingredients.) The comment stated that the Panel rejected the study by Bruhl and Leslie (Ref. 1) because (1) the drugs were coded A and B and the code could be deciphered, and (2) the low placebo success rate was questionable because "psychological factors are so important" (47 FR 43572 at 43574). However, the comment contended that there is no evidence that the code was broken, and that more recent data have suggested that the emphasis on psychological factors may have been misplaced (Ref. 9). The comment also noted that the Queen's University study (Ref. 2) concluded that yohimbine is effective; however, the agency found fault with the study because "the number of satisfactory results is lower than the number given in previous reports" (50 FR 2168 at 2169). The comment stated that it was unaware of any requirement under the law that the "number of satisfactory results" be equal to or higher than a "number given in previous reports."

The comments concluded that the available data support the effectiveness of yohimbine and other herbs and substances for aphrodisiac use, and requested a hearing on this issue before the Commissioner.

The agency has reviewed the references (Refs. 1 through 9) cited by one comment and noted the comment's criticism of the Panel's rejection of the Bruhl and Leslie study (Ref. 1). The agency finds that, regardless of the study defects mentioned by the Panel (i.e., inadequate blinding, low placebo response rate, and failure to define the study measurements of effectiveness (47 FR 43572 at 43574)), this study does not support the effectiveness of yohimbine because the product contained other ingredients in addition to yohimbine. The product contained 5 mg each of methyltestosterone, nux vomica, and yohimbine. Thus, any favorable results could not be attributed solely to yohimbine, because there were no studies to demonstrate the effectiveness of that ingredient alone. Furthermore, in four additional studies cited by the comment as supportive of the effectiveness of yohimbine (Refs. 3 through 6), the product used also contained a combination of methyltestosterone, nux vomica, and yohimbine. Therefore, these studies cannot be considered supportive of the effectiveness of yohimbine alone.

The study by Albert-Puleo (Ref. 7) regarding herbs (fennel and anise) as estrogenic agents narrates the history of use of these herbs, but does not provide any data relating to safety or efficacy. Clark et al. (Ref. 8) found that yohimbine increased sexual motivation in genital anesthetized rats. Although such data are encouraging, this preliminary animal study cannot be used to demonstrate the effectiveness of yohimbine in humans.

Slag et al. (Ref 9) studied the causes of impotence in 1,180 middle-aged men and

concluded that although erectile dysfunction has long been considered to be primarily a psychogenic disorder, underlying organic disease is often responsible for the impotence. They found that in 25 percent of the patients, the effect of medication was the likely cause of the impotence, 14 percent had psychogenic causes, 7 percent were of neurological origin (e.g., cerebrovascular accident), 44 percent were due to organic disease (e.g., urologic problems, diabetes, hypo/hyperthyroidism), 7 percent were due to unknown causes, and 4 percent were of miscellaneous origin. The agency concludes that this study has no relevance to the efficacy of yohimbine, but it does point out the need for patients to undergo a thorough medical evaluation to determine the cause of impotence.

The study from Queen's University by Reid et al. (Ref. 2) is a 10-week, placebo-controlled, double-blind, partial crossover study involving the use of capsules containing yohimbine (6 mg) and riboflavin (2 mg) versus placebo capsules containing only riboflavin. The capsules were taken three times a day. The study was designed to determine yohimbine's effect in restoring erectile function. Forty-eight subjects meeting strict diagnostic criteria for psychogenic impotence were included in the study. Impotence was defined as "failure to obtain an erection sufficient for intromission for at least 3 months." In phase I of the study, 29 subjects received yohimbine and 19 received placebo. Patients and their partners made independent ratings of treatment response according to the following scale of 0 through 2:

2=complete; return to satisfactory sexual functioning with erections sufficient for penetration.

1=partial; some improvement in the quality, frequency, or rigidity of erections, but not sufficient to restore satisfactory sexual functioning.

0=none; no change in sexual functioning from pretreatment levels.

At the end of phase I, 9 yohimbine patients reported "complete improvement," 9 reported "partial improvement," and 11 reported "no improvement." Of the patients, receiving the placebo, 1 reported "complete improvement," 2 reported "partial improvement," and 16 reported "no improvement."

At the end of the first 10 weeks, the 19 patients who had received the placebo were crossed over to yohimbine (phase II of the study). However, a complete crossover was not used because the investigators felt it would be disruptive to marital relationships to switch those patients who had taken the yohimbine to a placebo. Patients who crossed over from placebo to yohimbine did not show a significant change in sexual functioning from pretreatment levels. Three patients reported "complete improvement," 1 reported "partial improvement," and 15 reported "no improvement." No serious undesirable effects were reported.

The agency concludes that the study (Ref. 2) provides some suggestive evidence that yohimbine may be useful in treating male impotence. In phase I of the study, 31 percent of the yohimbine patients reported complete improvement versus 5 percent of the placebo patients. However, in phase II, only 16 percent reported complete improvement. The investigators speculated that this lower response of patients who received yohimbine after receiving placebo may have been due to a negative expectancy effect. The agency concludes that this small scale study is not sufficient to establish the general recognition of yohimbine or any of its derivatives as safe and effective for treating male impotence. Further studies using adequate numbers of patients are needed to determine yohimbine's effectiveness in treating male impotence. In addition, the agency has safety concerns regarding OTC use of yohimbine. (See comment 6 above.) The agency encourages further study of yohimbine or any of its derivatives to establish their safety and usefulness in relieving male impotence. Such data may be submitted as the subject of an NDA. (See 21 CFR Part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to establish a monograph. (See 21 CFR 10.30.)

The agency has carefully considered the data in the administrative record and the arguments included in the comments. The agency has determined that at present there is insufficient evidence to establish that any ingredient, including yohimbine, used in OTC aphrodisiac drug products is generally recognized as safe and effective. Because these matters have been fully considered and because the agency concludes that a hearing on this issue is not likely to provide any additional useful information or insights, the agency concludes that a hearing is not warranted.

References

(1) Bruhl, D. E., and C. H. Leslie, "Afrodex: Double-Blind Test in Impotence," *Medical Record and Annals*, 56:22–23, 1963.

(2) Reid, et al., "Double-Blind Trial of Yohimbine in Treatment of Psychogenic Impotence," *The Lancet*, 2:421–423, 1987.

(3) Miller, W. W., "Afrodex in the Treatment of Male Impotence: A Double-Blind Cross-Over Study," *Current Therapeutic Research*, 10:354–359, 1968.

(4) Margolis, R., et al., "Statistical Summary of 10,000 Male Cases Using Afrodex in the Treatment of Impotence," *Current Therapeutic Research*, 13:616–622, 1971.

(5) Sobotka, J. J., "An Evaluation of Afrodex in the Management of Male Impotency: A Double-Blind Crossover Study," *Current Therapeutic Research*, 11:87–94, 1969.

(6) Margolis, R., et al., "Review of Studies on a Mixture of Nux Vomica, Yohimbine, and Methyl Testosterone in the Treatment of Impotence," *Current Therapeutic Research*, 8:280–283, 1966.

(7) Albert-Puleo, M., "Fennel and Anise as Estrogenic Agents," *Journal of Ethnopharmacology*, 2:337–344, 1980.

(8) Clark, J. T., E. R. Smith, and J. M. Davidson, "Enhancement of Sexual Motivation in Male Rats by Yohimbine," *Science*, 225:847–849, 1984.

(9) Slag, M. F., et al., "Impotence in Medical Clinic Outpatients," *The Journal of the American Medical Association*, 249:1736–1740, 1983.

9. One comment requested that publication of the final monograph be delayed until data from studies, reportedly ongoing, on yohimbine can be appropriately considered.

The comment was submitted in May 1985. The agency has received no additional information on these or any other studies. The agency cannot further delay publication of this final rule to await results of any reportedly ongoing studies. Such a delay would allow products that have not been shown to be safe and effective to remain in the marketplace for a prolonged period of time and is not in the public interest. Further, manufacturers have been alerted about the proposed nonmonograph status of aphrodisiacs since the Panel's report was published in the **Federal Register** on October 1, 1982 (47 FR 43572). The agency reiterated the proposed nonmonograph status of aphrodisiacs in the notice of proposed rulemaking over 3 years ago in the **Federal Register** of January 15, 1985 (50 FR 2168). Thus, manufacturers have had ample opportunity to conduct clinical trials and to submit the results to the agency.

The agency points out that publication of a final rule does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to

the agency at a later date as the subject of an NDA that may provide for prescription or OTC marketing status. (See 21 CFR Part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to establish a monograph. (See 21 CFR 10.30.)

For the above reasons, the agency will not delay the final rule until publication of these studies.

II. The Agency's Final Conclusions on OTC Aphrodisiac Drug Products

The agency has determined that all products that bear labeling claiming that they will arouse or increase sexual desire, or that they will improve sexual performance, are aphrodisiac drug products. Moreover, the agency has determined that no aphrodisiac drug product has been found to be generally recognized as safe and effective and not misbranded for use in treating sexual dysfunction. Therefore, all aphrodisiac drug products, including those containing such ingredients as anise, cantharides, don qual, estrogens, fennel, ginseng, golden seal, gotu kola, Korean ginseng, licorice, mandrake, methyltestosterone, minerals, nux vomica, Pega Palo, sarsaparilla, strychnine, testosterone, vitamins, yohimbine, yohimbine hydrochloride, and yohimbinum, are considered nonmonograph ingredients and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) and are new drugs under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved NDA under section 505 of the act (21 U.S.C. 355) and Part 314 of the regulations (21 CFR Part 314) is required for marketing. In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an NDA. Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action.

In response to the agency's request for specific comment on the economic impact of this rulemaking (50 FR 2168), one comment was received. (See comment 7 above.) The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC aphrodisiac drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC aphrodisiac drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended in Part 310 to read as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1049-1053 as amended, 52 Stat. 1055-1056 as amended, 67 Stat. 477 as amended, 52 Stat. 1057-1058 (21 U.S.C. 351, 352, 353, 355, 371, 374, 375); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. New § 310.528 is added to Subpart E to read as follows:

§ 310.528 Drug products containing active ingredients offered over-the-counter (OTC) for use as an aphrodisiac.

(a) Any product that bears labeling claims that it will arouse or increase sexual desire, or that it will improve sexual performance, is an aphrodisiac drug product. Anise, cantharides, don qual, estrogens, fennel, ginseng, golden seal, gotu kola, Korean ginseng, licorice, mandrake, methyltestosterone, minerals, nux vomica, Pega Palo, sarsaparilla, strychnine, testosterone, vitamins, yohimbine, yohimbine hydrochloride, and yohimbinum have been present as ingredients in such drug products. Androgens (e.g., testosterone and methyltestosterone) and estrogens are powerful hormones when administered internally and are not safe for use except under the supervision of a physician. There is a lack of adequate data to establish general recognition of the safety and effectiveness of any of these ingredients, or any other ingredient, for OTC use as an aphrodisiac. Labeling claims for aphrodisiacs for OTC use are either false, misleading, or unsupported by scientific data. The following claims are examples of some that have been made for aphrodisiac drug products for OTC use: "acts as an aphrodisiac;" "arouses or increases sexual desire and improves sexual performance;" "helps restore sexual vigor, potency, and performance;" "improves performance, staying power, and sexual potency;" and "builds virility and sexual potency." Based on evidence currently available, any OTC drug product containing ingredients for use as an aphrodisiac cannot be generally recognized as safe and effective.

(b) Any OTC drug product that is labeled, represented, or prompted for use as an aphrodisiac is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act, (the act), for which an approved new drug application under section 505 of the act and Part 314 of this chapter is required for marketing. In the absence of an approved new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use as an aphrodisiac is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in Part 312 of this chapter.

(d) After January 8, 1990, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Dated: March 20, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-15954 Filed 7-6-89; 8:45 am]

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federal register

Friday
July 7, 1989

Part VII

Federal Communications Commission

47 CFR Ch. I

Broadcast Television and Satellite Services; Syndicated Exclusivity Requirements for Television Broadcast Signals Delivered by Satellite to Home Satellite Earth Station B Receiver; Extension of Comments

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[Gen Docket No. 89-89, DA 89-753]

Broadcast Television and Satellite Services; Syndicated Exclusivity Requirements for Television Broadcast Signals Delivered by Satellite to Home Satellite Earth Station Receivers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission extends the comment period established in the *Notice of Inquiry and Notice of Proposed Rule Making* (*"Notice"*) in this proceeding (54 FR 19413, May 5, 1989) from July 7, 1989, to August 7, 1989, and the reply comment perod from August 4, 1989, to September 5, 1989. The action is taken in response to two motions for extension of time filed by the Satellite Broadcasting and Communications Association of America ("SBCA") and jointly by the National Association of Broadcasters, the Association of Independent Television Stations, and the Motion Picture Association of America ("NAB *et al.*"). SCBA requested an extension of time to analyze the impact of a recent report that a group of cable multiple system operators is planning to deliver by satellite a package of programming that includes distant broadcast signals. NAB *et al.* requested an extension for two reasons: (1) To provide sufficient time for its recently retained experts to fully analyze the issues and to incorporate that analysis in their comments; and (2) to allow the petitioners a chance to review the comments submitted in response to a related *Notice of Inquiry* in general Docket No. 89-78 (54 FR 18125, April 27, 1989), concerning the need for a universal encryption standard. As indicated in the *Notice*, the Commission is dependent on interested parties to provide an analysis of a broad range of complex technical and economic issues raised in this proceeding. As representatives of the industries affected by the Commission's proceeding, the petitioners are in a unique position to provide analysis of the technical and economic issues raised in the *Notice*. Thus, the Commission believes an extension of time may greatly increase the quality and scope of the data and analysis submitted, and may be instrumental in resolving the issues presented in the *Notice*.

DATES: Initial comments are due on August 7, 1989, and reply comments are due on September 5, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order Granting Motions for Extension of Time To File Comments*, adopted June 28, 1989, and released July 3, 1989. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 1919 M Street, NW., Room 246, Washington, DC.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 89-16163 Filed 7-6-89; 10:41 am]

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federal register

Friday
July 7, 1989

Part VIII

Department of Energy

Waste Isolation Pilot Plant (WIPP); Draft Supplement to the Environmental Impact Statement; Public Hearing Change in Date

DEPARTMENT OF ENERGY

Waste Isolation Pilot Plant (WIPP); Draft Supplement to the Environmental Impact Statement; Public Hearing Change in Date

AGENCY: Department of Energy.

ACTION: Change in date of a public hearing in Utah on the draft Supplemental Environmental Impact Statement (SEIS) on WIPP.

SUMMARY: On April 21, 1989, the Department of Energy (DOE) published a notice in the **Federal Register** (54 FR 16350) announcing the availability of the draft SEIS, the subsequent 60-day public comment period, and the six public hearing schedules, locations and procedures. On June 12, 1989, a notice was published (54 FR 24940), announcing two additional hearings in Texas and New Mexico and a 7-day extension of the comment period. On June 26, 1989, a notice was published (54 FR 26828) announcing a third additional public hearing on the SEIS in Ogden, Utah, and an extension of the public comment period to July 11, 1989. The date for the Ogden, Utah, public hearing has been postponed to July 10, 1989, to allow for additional advertisement of the hearing and to ensure that interested citizens have time to register to comment.

The hearing will take place on July 10, 1989, at the Ogden Hotel, 247 24th Street, Ogden, Utah. It will begin at 9:00 a.m. and will continue as needed, through the day and evening with recesses for meals.

Participation Procedures: Written comments should be mailed to the address below and postmarked by July 11, 1989. Persons wishing to preregister to make oral comments at the public hearing in Ogden, Utah, should call DOE's WIPP SEIS Project Office at the phone number below. Commenters may also register at the door and will be accommodated as time allows.

ADDRESSES: Written comments should be directed to: W. John Arthur III, Project Manager, WIPP SEIS Project Office, U.S. Department of Energy, 6301 Indian School Road, NE, 7th Floor, Albuquerque, NM 87110. Those wishing to be placed on the list of preregistered oral commenters should call DOE's toll-free number 1–800–274–0585 and leave their name, phone number, and address with zip code.

FOR FURTHER INFORMATION CONTACT: W. John Arthur, III, WIPP SEIS Project Manager, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87110 (505) 889–3038, or Carol Borgstrom, Director, Office of NEPA Project Assistance (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.

Dated in Washington, DC, this 5th day of July, 1989, for the U.S. Department of Energy.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89–16171 Filed 7–6–89; 11:13 am]

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H.R. 2344/Pub. L. 101-44

To authorize the transfer to the Republic of the Philippines of two excess naval vessels. (June 30, 1989; 103 Stat. 96; 1 page) Price: $1.00

H.R. 2402/Pub. L. 101-45

Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors Act of 1989. (June 30, 1989; 103 Stat. 97; 35 pages) Price: $1.25

S. 694/Pub. L. 101-46

To extend title I of the Energy Policy and Conservation Act. (June 30, 1989; 103 Stat. 132; 2 pages) Price: $1.00

S. 1077/Pub. L. 101-47

To authorize the President to appoint Admiral James B. Busey to the Office of Administrator of the Federal Aviation Administration. (June 30, 1989; 103 Stat. 134; 2 pages) Price: $1.00

S. 1180/Pub. L. 101-48

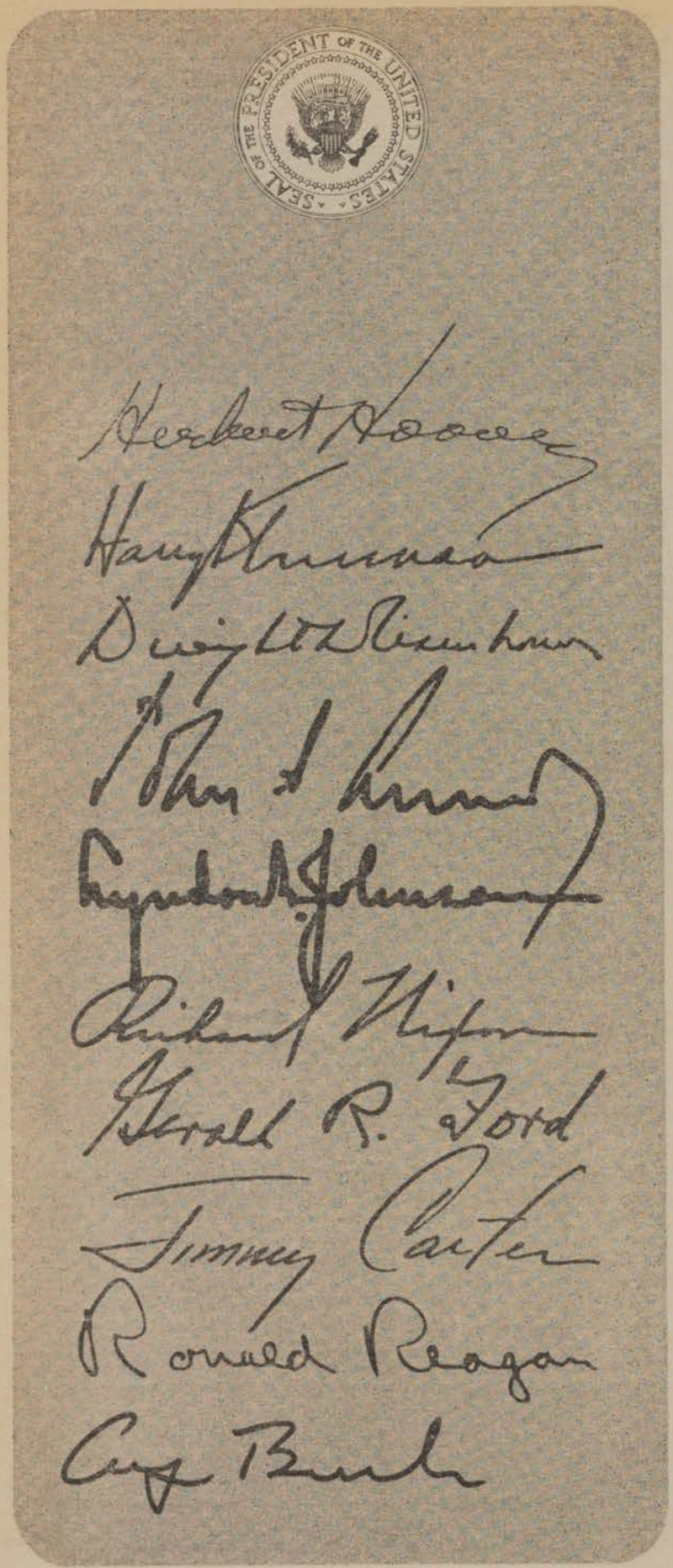
To authorize the President to appoint Rear Admiral Richard Harrison Truly to the Office of the Administrator of the National Aeronautics and Space Administration. (June 30, 1989; 103 Stat. 136; 2 pages) Price: $1.00

S. 1184/Pub. L. 101-49

To allow the obsolete destroyer United States ship Edson (DD946) to be transferred to the Intrepid Sea-Air-Space Museum in New York before the expiration of the otherwise applicable sixty-day congressional review period. (June 30, 1989; 103 Stat. 138; 1 page) Price: $1.00

S.J. Res. 96/Pub. L. 101-50

Designating July 2, 1989, as "National Literacy Day". (June 30, 1989; 103 Stat. 139; 2 pages) Price: $1.00



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